

**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
	)	
Airman Basic (E-1),	)	No. ACM 40461
<b>BRANDON P. CLARK,</b>	)	
United States Air Force,	)	7 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)(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 **19 September 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 46 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,

DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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 July 2023.

Respectfully submitted,

DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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 7 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>NOTICE OF APPEARANCE</b>
<i>Appellee,</i>	)	
	)	Before Panel No. 1
v.	)	
	)	No. ACM 40461
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	22 August 2023
United States Air Force,	)	
<i>Appellant.</i>	)	

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

Pursuant to Rules 12 and 13 of this Honorable Court's Rules of Practice and Procedure, the undersigned, an attorney admitted to practice before this Court, hereby enters her appearance as the appellate counsel for the appellant in the above-captioned case.

Respectfully submitted,

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

**CERTIFICATE OF FILING AND SERVICE**

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

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

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

UNITED STATES, <i>Appellee,</i>	)	<b>MOTION FOR WITHDRAWAL OF</b>
	)	<b>APPELLATE DEFENSE COUNSEL</b>
	)	
v.	)	Before Panel No. 1
	)	
Airman Basic (E-1),	)	No. ACM 40461
<b>BRANDON P. CLARK,</b>	)	
United States Air Force,	)	22 August 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. Captain Samantha Castanien has been detailed substitute counsel in undersigned counsel’s stead; she will make her notice of appearance within ten days. A thorough turnover of the record between counsel has been completed. The undersigned counsel will be departing from the Air Force Appellate Defense Division and beginning a new assignment on .

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,

DAVID L. BOSNER, Maj, USAF  
Appellate Defense Counsel  
Appellate Defense Division  
United States Air Force

**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 22 August 2023.



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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(SECOND)</b>
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	11 September 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 October 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, NM, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is eleven volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is currently confined.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 11 September 2023.

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

**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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 ENLARGEMENT OF</b>
<i>Appellee,</i>	)	<b>TIME (THIRD)</b>
	)	
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	10 October 2023

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

Pursuant to Rule 23.3(m)(3) and 23.3(m)(4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 November 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, NM, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is eleven volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is currently confined.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 10 October 2023.

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



**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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>MOTION FOR ENLARGEMENT</b>
<i>Appellee,</i>	)	<b>OF TIME (FOURTH)</b>
	)	
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	6 November 2023

**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 his fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 December 2023**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 168 days have elapsed. On the date requested, 210 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, NM, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one Court Exhibit. The transcript is 1,060 pages. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned thirteen cases; ten cases are pending initial AOE’s before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, seven cases have priority over the present case:

1. *United States v. Wells*, USCA Dkt. No. 23-0219/AF – On 20 October 2023, the CAAF granted review of one issue. Counsel is currently writing the Grant Brief, due 15 December 2023.

2. *In re HVZ*, USCA Dkt. No 23-0250/AF – Oral argument is scheduled for 5 December 2023. While working on *United States v. Wells*, counsel will be preparing to argue on behalf of the real party in interest.

3. *United States v. Leipart*, USCA Dkt. No. 23-0163/AF – Oral argument is scheduled for 16 January 2023. While working on the cases listed below, counsel will be preparing for oral argument in this case.

4. *United States v. Bak*, No. ACM 40405 – The trial transcript is 95 pages long and the record of trial is comprised of four volumes containing seven Prosecution Exhibits, two Defense

Exhibits, nine Appellate Exhibits, and two Court Exhibits. Appellant is currently confined. On 30 October 2023, this Court ruled on appellant's motion for leave to file motion for remand, deferring any decision on remand until Article 66, UCMJ, review. Counsel is conferring with the appellant and researching final issues in preparation for the AOE.

5. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Counsel has completed her review of the transcript, but has not yet completed her review of the remaining parts of the record.

6. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

7. *United States v. Braum*, No. ACM 40434 – The trial transcript is 1,284 pages long and the record of trial contains 12 volumes consisting of eight Prosecution Exhibits, 19 Defense Exhibits, 58 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Counsel has not yet completed her review of the record of trial.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 6 Novemeber 2023.

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

**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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 7 November 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</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (FIFTH)</b>
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	7 December 2023

**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 his fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 January 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, NM, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned fifteen cases; twelve cases are pending initial AOE’s before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, five cases have priority over the present case:

1. *United States v. Wells*, USCA Dkt. No. 23-0219/AF – On 20 October 2023, the CAAF granted review of one issue. Counsel is currently finishing the Grant Brief and the Joint Appendix, due 15 December 2023.

2. *United States v. Leipart*, USCA Dkt. No. 23-0163/AF – Oral argument is scheduled for 16 January 2023. While working on the cases listed below, counsel will be preparing for oral argument in this case.

3. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Counsel

has completed her review of the transcript, but has not yet completed her review of the remaining parts of the record.

4. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

5. *United States v. Braum*, No. ACM 40434 – The trial transcript is 1,284 pages long and the record of trial contains 12 volumes consisting of eight Prosecution Exhibits, 19 Defense Exhibits, 58 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined.

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.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 December 2023.

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

**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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 8 December 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</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (SIXTH)</b>
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	8 January 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 February 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, NM, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned fifteen cases; twelve cases are pending initial AOE’s before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, five cases have priority over the present case:

1. *United States v. Leipart*, USCA Dkt. No. 23-0163/AF – Oral argument is scheduled for 16 January 2024. Counsel is currently preparing for oral argument while working on the cases listed below.

2. *United States v. Wells*, USCA Dkt. No. 23-0219/AF – On 20 October 2023, the CAAF granted review of one issue. Undersigned counsel filed the Grant Brief on 15 December 2023. The Government’s Answer Brief is due by 23 January 2024, as the CAAF approved the Government’s request for additional time. Upon receipt of the Answer Brief, undersigned counsel will begin working on the Reply Brief.

3. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense



Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Counsel has completed her review of the transcript, but has not yet completed her review of the remaining parts of the record.

4. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

5. *United States v. Braum*, No. ACM 40434 – This appellant has provided limited consent to disclose a confidential communication with counsel wherein he has conditionally waived military appellate counsel's review of the record so as to exercise his right to speedy appellate review. Based on this appellant's request, this appellant's civilian appellate defense counsel intends to file an AOE without undersigned counsel's review of the record. However, undersigned counsel remains detailed Article 70, UCMJ, counsel and will review the AOE, currently containing eight issues, prior to filing.

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.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 January 2024.

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

**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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.

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 8 January 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>APPELLANT’S MOTION</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (SEVENTH)</b>
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	5 February 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his 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 **17 March 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 259 days have elapsed. On the date requested, 300 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, New Mexico, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned fifteen cases; twelve cases are pending initial AOE’s before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, four cases have priority over the present case:

1. *United States v. Wells*, USCA Dkt. No. 23-0219/AF – On 20 October 2023, the CAAF granted review of one issue. Undersigned counsel is drafting the Reply Brief, due 9 February 2024. Oral argument is scheduled for 6 March 2024.

2. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Undersigned counsel has completed her review of the transcript, and outlined one assignment of error, but has not yet completed her review of the remaining parts of the record.

3. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense

Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record of trial, but civilian appellate defense counsel has begun drafting the AOE.

4. *United States v. Braum*, No. ACM 40434 – This appellant’s civilian appellate defense counsel intends to file an AOE without undersigned counsel’s review of the record based on this appellant’s request to exercise his right to speedy appellate review. Undersigned counsel remains detailed Article 70, UCMJ, counsel and has reviewed the AOE, which is pending finalization and filing by 7 March 2024.

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.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 5 February 2024.

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



**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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.

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 a year-long delay practically ensures this Court will not be able to issue a decision that complies with out 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.

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 5 February 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>APPELLANT’S MOTION</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (EIGHTH)</b>
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1),	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	5 March 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his 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 **16 April 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 288 days have elapsed. On the date requested, 330 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, New Mexico, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is not currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned seventeen cases; fourteen cases are pending AOE’s before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, five cases have priority over the present case:

1. *United States v. Wells*, USCA Dkt. No. 23-0219/AF – On 20 October 2023, the CAAF granted review of one issue. Oral argument is scheduled for 6 March 2024, and undersigned counsel is currently preparing for argument.

2. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Counsel has reviewed the transcript, the sealed materials, the prosecution and defense exhibits, and the pre-trial and post-trial processing. She has started outlining several assignments of error as she continues her review. Undersigned counsel is balancing her review of this appellant’s record with her preparation for oral argument in *United States v. Wells*, USCA Dkt. No. 23-0219/AF.

3. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Civilian appellate defense counsel has begun drafting the AOE while undersigned counsel completes her pending priorities before reviewing the record.

4. *United States v. Braum*, No. ACM 40434 – Civilian appellate defense counsel filed this appellant's AOE on 10 February 2024. This appellant has provided limited consent to disclose a confidential communication with counsel wherein he has conditionally waived military appellate counsel's review of the record so as to exercise his right to speedy appellate review. Depending on this appellant's request, undersigned counsel may review any reply brief before it is filed.

5. *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev) – The trial transcript is 362 pages long and the record of trial is four volumes consisting of nine Prosecution Exhibits, two Defense Exhibits, and six Appellate Exhibits. Appellant is not currently in confinement. Undersigned counsel has reviewed the rehearing-related documents, which has triggered the need to review the transcript to advise this appellant on a new AOE. Undersigned counsel was not this appellant's original military appellate defense counsel.

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.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 Air Force Government Trial and Appellate Operations Division on 5 March 2024.

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



**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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 a year-long delay practically ensures this Court will not be able to issue a decision that complies with out 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.

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

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

UNITED STATES	)	No. ACM 40461
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Brandon P. CLARK	)	
Airman Basic (E-1)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

On 5 March 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 7th day of March 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **16 April 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</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (NINETH)</b>
v.	)	
	)	Before Panel No. 1
Airman Basic (E-1)	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	5 April 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his 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 **16 May 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 319 days have elapsed. On the date requested, 360 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, New Mexico, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit.

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is not currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned eighteen cases; fifteen cases are pending AOE’s before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, four cases have priority over the present case:

1. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Undersigned counsel has reviewed the record and is drafting the AOE. She has identified several assignments of error, to include legal and factual sufficiency for both charges. Barring extraordinary circumstances, this AOE will be submitted early May.

2. *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev) – The trial transcript is 362 pages long and the record of trial is four volumes consisting of nine Prosecution Exhibits, two Defense Exhibits, and six Appellate Exhibits. Appellant is not currently in confinement. Undersigned counsel has reviewed the rehearing-related documents, which has triggered the

need to review the transcript for a possible new AOE. Undersigned counsel was not this appellant's original military appellate defense counsel. On 19 March 2024, this Court held as status conference discussing the procedural posture of this case and the issue noted in the rehearing documents. On 20 March 2024, the Court issued an order wherein any assignments of error would be filed by 24 April 2024, and, absent extraordinary circumstances, no further requests for an enlargement of time would be granted. As a result of this order, this appellant's case, docketed with the Court on 27 October 2023, has increased in priority.

3. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Civilian appellate defense counsel has begun drafting the AOE while undersigned counsel completes her pending priorities before reviewing the record independently to ensure this appellant's rights on appeal are protected.

4. *United States v. Braum*, No. ACM 40434 – Civilian appellate defense counsel filed this appellant's AOE on 10 February 2024. This appellant has provided limited consent to disclose a confidential communication with counsel wherein he has conditionally waived military appellate counsel's review of the record so as to exercise his right to speedy appellate review. Depending on timing and this appellant's request, undersigned counsel will likely review any reply brief before it is filed.

Additionally, to alert the Court ahead of time, undersigned counsel has authorized overseas leave from . She will be unable to work on Appellant's case, or any other case, during this time. However, upon return, based on undersigned counsel's anticipated

schedule and case priorities, undersigned counsel anticipates Appellant's case will become the first case on her priority list.

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.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 Air Force Government Trial and Appellate Operations Division on 5 April 2024.

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

**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 Basic (E-1),	)	ACM 40461
BRANDON P. CLARK, 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 a year-long delay practically ensures this Court will not be able to issue a decision that complies with out superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

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 5 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

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

<b>UNITED STATES</b>	)	<b>No. ACM 40461</b>
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>NOTICE OF PANEL</b>
<b>Brandon P. CLARK</b>	)	<b>CHANGE</b>
<b>Airman Basic (E-1)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

It is by the court on this 12th day of April, 2024,

**ORDERED:**

That the record of trial in the above-styled matter is withdrawn from Panel 1 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

ANNEXSTAD, WILLIAM J., Colonel, Senior Appellate Military Judge  
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge  
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge



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</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (TENTH)</b>
v.	)	
	)	Before Special Panel
Airman Basic (E-1)	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	3 May 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his 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 **15 June 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 347 days have elapsed. On the date requested, 390 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, New Mexico, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit. R. at 1060. The convening authority took no action on the findings and approved the sentence in

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action* – United States v. AB Brandon P. Clark, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is not currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is assigned 22 cases; 19 cases are pending AOE’s before this Court and three cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, three cases have priority over the present case:

1. *United States v. Folts*, No. ACM 40322 – The trial transcript is 2,141 pages long and the record of trial contains eight volumes consisting of ten Prosecution Exhibits, 40 Defense Exhibits, 66 Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined. Civilian appellate defense counsel, who was also trial defense counsel, has begun drafting the AOE and undersigned counsel has completed her review of the record. Undersigned counsel is coordinating with civilian appellate defense counsel and this appellant on the identified issues and finalizing the AOE, currently due 19 May 2024.

2. *United States v. Baumgartner*, No. ACM 40413 – The trial transcript is 797 pages long and the record of trial contains seven volumes consisting of six Prosecution Exhibits, 17 Defense Exhibits, 44 Appellate Exhibits, and one Court Exhibit. Appellant is currently confined. Undersigned counsel has written the draft AOE, which is pending civilian appellate defense counsel’s addition of one potential issue relating to ineffective assistance of counsel. This AOE will be submitted early June.

3. *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev) – This appellant’s AOE was submitted on 24 April 2024. The Government’s Answer is expected by 28 May 2024, upon which undersigned counsel will assess whether a reply is warranted.

Additionally, to alert the Court ahead of time, undersigned counsel has authorized leave from . She will be out of the office from . She will be unable to work on Appellant’s case, or any other case, during this time. However, upon return, based on undersigned counsel’s anticipated schedule and case priorities, undersigned counsel anticipates Appellant’s case will become the first case on her priority list.

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.

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 Air Force Government Trial and Appellate Operations Division on 3 May 2024.

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

**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 Basic (E-1)	)	ACM 40461
BRANDON P. CLARK, USAF,	)	
<i>Appellant.</i>	)	Special Panel
	)	

**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 over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over one year 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 his 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 7 May 2024.

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

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

UNITED STATES	)	No. ACM 40461
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
<b>Brandon P. CLARK</b>	)	
<b>Airman Basic (E-1)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Special Panel</b>

On 3 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Tenth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

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 8th day of May 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Tenth) is **GRANTED**. Appellant shall file any assignments of error not later than **15 June 2024**.

Appellant’s counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time may necessitate a status conference.



FOR THE COURT

V U , 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</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (ELEVENTH)</b>
v.	)	
	)	Before Special Panel
Airman Basic (E-1)	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	4 June 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his eleventh 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 July 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 379 days have elapsed. On the date requested, 420 days will have elapsed.

On 27 January 2023, at Kirtland Air Force Base, New Mexico, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit. R. at 1060. The convening authority took no action on the findings and approved the sentence in

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

its entirety. Record of Trial (ROT) Vol. 1, *Convening Authority Decision on Action – United States v. AB Brandon P. Clark*, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is not currently confined. Undersigned counsel is currently reviewing the record for the AOE.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 25 cases; 21 cases are pending before this Court (18 cases are pending AOE’s) and four cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). **Appellant’s case is undersigned counsel’s first priority.** However, undersigned counsel must manage three other cases while working Appellant’s AOE in light of various impending deadlines:

1. *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev) – Undersigned counsel is currently drafting the petition for grant of review and supplement to the petition for grant of review for the CAAF.

2. *United States v. Folts*, No. ACM 40322 – This appellant’s AOE was filed on 16 May 2024 (while undersigned counsel was on leave). The Government’s Answer is expected on or near 15 June 2024 (a Saturday), upon which undersigned counsel will turn to drafting a reply brief. Any reply brief may impact undersigned counsel’s processing and review of Appellant’s case.

3. *United States v. Baumgartner*, No. ACM 40413 – Since Appellant’s last request for an enlargement of time, undersigned counsel finalized and submitted this appellant’s AOE on 3 June 2024 (after two weeks of leave). The Government’s Answer is expected

sometime in July, although pending motions in this case may affect the anticipated date. Any reply brief due thereafter may impact undersigned counsel's review of Appellant's case.

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

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 Air Force Government Trial and Appellate Operations Division on 4 June 2024.

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

**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 Basic (E-1)	)	ACM 40461
BRANDON P. CLARK, USAF,	)	
<i>Appellant.</i>	)	Special Panel
	)	

**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 over 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 420 days in length. Appellant's over one year delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 4 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed his 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.

BRITTANY M. SPEIRS, Maj, 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 5 June 2024.

BRITTANY M. SPEIRS, Maj, 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**

**UNITED STATES**

*Appellee,*

v.

Airman Basic (E-1)

**BRANDON P. CLARK,**

United States Air Force,

*Appellant.*

) **APPELLANT’S MOTION**

) **TO EXAMINE SEALED**

) **MATERIALS**

) Before Special Panel

) No. ACM 40461

) 4 June 2024

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

Pursuant to Rules 3.1 and 23.3(f) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to examine the sealed materials in Appellant’s record of trial: **Appellate Exhibits XXVI-XXXI** (listed in Vol. 4, but moved to Vol. 11), **Appellate Exhibit LVIII** (listed in Vol. 5, but moved to Vol. 11), and **transcript pages 110-114** (listed in Vol. 7, but moved to Vol. 11). As detailed in Appellate Exhibit LIX, the sealed materials cover purported Military Rule of Evidence (Mil. R. Evid.) 412 material, although the military judge ultimately determined Mil. R. Evid. 412 did not apply to Appellant’s court-martial because he was not charged with a sexual offense. App. Ex. LIX. The military judge, trial counsel, and defense counsel at trial reviewed these materials.

Pursuant to Rule for Court Martial (R.C.M.) 1113(b)(3)(B)(i), “materials presented or reviewed at trial and sealed . . . may be examined by appellate counsel upon a colorable showing to the reviewing or appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities[.]” A review of the entire record is necessary because this Court is empowered by Article 66(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(c), to grant relief based on a review and analysis of “the entire record.” To determine whether the record

of trial yields grounds for this Court to grant relief under Article 66(c), UCMJ, 10 U.S.C. §866, counsel must therefore examine “the entire record.”

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

*United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). The sealed materials must be reviewed in order for counsel to provide “competent appellate representation.” *Id.* Therefore, undersigned counsel’s examination of the sealed materials is reasonably necessary to fulfill her responsibilities in this case as counsel cannot perform her duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, or fulfill her duty to provide effective assistance of counsel without first reviewing the complete record of trial.

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

Respectfully submitted,

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

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 4 June 2024.

Respectfully submitted,

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

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

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE
v.	)	SEALED MATERIALS
	)	
Airman Basic (E-1)	)	ACM 40461
BRANDON P. CLARK, USAF	)	
<i>Appellant.</i>	)	Special Panel
	)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Materials. The United States does not object to Appellant's counsel reviewing the named exhibits and transcript pages, so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

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

MARY ELLEN PAYNE  
Associate Chief, Government Trial and  
Appellate Operations Division  
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 June 2024.

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

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

<b>UNITED STATES</b>	)	<b>No. ACM 40461</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Brandon P. CLARK</b>	)	
<b>Airman Basic (E-1)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Special Panel</b>

On 4 June 2024, counsel for Appellant submitted a Motion to Examine Sealed Materials, requesting to examine Appellate Exhibits XXVI–XXXI, Appellate Exhibit LVIII, and transcript pages 110–114,\* which were reviewed by trial and defense counsel at Appellant’s court-martial.

On 5 June 2024, the Government informed the court that it does not oppose the motion “so long as the United States can also review the sealed portions of the record as necessary to respond to the assignment of error that refers to the sealed materials.”

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

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

Accordingly, it is by the court on this 10th day of June 2024,

**ORDERED:**

Appellant’s Motion to Examine Sealed Materials is **GRANTED**.

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\* According to Appellant’s motion, Appellate Exhibits XXVI–XXXI are listed in Volume (Vol.) 4, Appellate Exhibit LVIII is listed in Vol. 5, and transcript pages 110–114 are listed in Vol. 7; of which all were moved to Vol. 11.

Appellate defense counsel and appellate government counsel may view **Appellate Exhibits XXVI–XXXI, Appellate Exhibit LVIII, and transcript pages 110–114**, subject to the following conditions:

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

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



FOR THE COURT

CAROL K. JOYCE  
Clerk of the Court

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT OF</b>
	)	<b>TIME (TWELFTH)</b>
v.	)	
	)	Before Special Panel
Airman Basic (E-1)	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	1 July 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file an Assignments of Error (AOE). Appellant requests an EOT for a period of 30 days, which will end on **14 August 2024**. The record of trial was docketed with this Court on 22 May 2023. From the date of docketing to the present date, 406 days have elapsed. On the date requested, 450 days will have elapsed. **Undersigned counsel anticipates this EOT request will be the last, absent extraordinary circumstances.** As detailed further below, undersigned counsel is in the middle of reviewing the Record of Trial (ROT) but needs additional time to advise Appellant and draft the AOE.

On 27 January 2023, at Kirtland Air Force Base, New Mexico, a general court-martial composed of officer members convicted Appellant, contrary to his pleas, of one charge and one specification of violating Article 90, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 890, and one charge and one specification of violating Article 128b, UCMJ, 10 U.S.C. § 928b. R. at 1013.<sup>1</sup> The military judge sentenced Appellant to total forfeitures of all pay and allowances, to

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<sup>1</sup> In accordance with his pleas, the panel acquitted Appellant of one charge and one specification of violating Article 115, UCMJ, 10 U.S.C. § 915, and one charge and one specification of violating Article 125, UCMJ, 10 U.S.C. § 925.

be confined for a total of 30 months through concurrent sentences, and to be dishonorably discharged. R. at 1059. The military judge also awarded 225 days of pretrial confinement credit. R. at 1060. The convening authority took no action on the findings and approved the sentence in its entirety. ROT, Vol. 1, *Convening Authority Decision on Action* – United States v. AB Brandon P. Clark, dated 14 February 2023. The convening authority also denied Appellant’s request to suspend his adjudged forfeitures and defer automatic forfeitures until the entry of judgment. *Id.*

The record of trial is 11 volumes consisting of 19 Prosecution Exhibits, 26 Defense Exhibits, 59 Appellate Exhibits, and one court exhibit. The transcript is 1,060 pages. Appellant is not currently confined.

Pursuant to A.F. CT. CRIM. APP. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 28 cases; 24 cases are pending before this Court (20 cases are pending AOE) and four cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). **Appellant’s case remains undersigned counsel’s first priority.**

Since the last EOT, undersigned counsel has reviewed Appellant’s record for completeness, substantively reviewed the post- and pre-trial documents and processing, and is currently substantively reviewing the motions filed in this case in conjunction with her review of the trial proceedings. Undersigned counsel intends to complete review of the 1,060-page transcript next week, 8-12 July, and then advise Appellant on assignments of error. However, while working on Appellant’s AOE, undersigned counsel must assist on the Grant Brief for *United States v. Casillas*, No. 24-0089/AF. This case was recently granted at the CAAF (14 June 2024, four issues for briefing), and undersigned counsel was assigned to take over this case from a departing appellate defense counsel. The Grant Brief is due 15 July 2024.

Since Appellant's last request for an EOT, undersigned counsel drafted and filed the petition for grant of review and supplement to the petition for grant of review for *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev), drafted and filed the Reply Brief for *United States v. Folts*, No. ACM 40322, and participated in oral argument preparation for *United States v. Braum*, No. ACM 40434.

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

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

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF  
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 Air Force Government Trial and Appellate Operations Division on 1 July 2024.

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

**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 Basic (E-1)	)	ACM 40461
BRANDON P. CLARK, USAF,	)	
<i>Appellant.</i>	)	Special Panel
	)	

**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 over 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 450 days in length. Appellant's more than one year delay 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 3 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed his review of the record of trial at this late stage of the appellate process.

Moreover, it is apparent that this enlargement of time is unlikely to be the final enlargement requested in this case. Even if Appellant's counsel were to complete the review of the record of trial in this case prior to these 30 days elapsing, there seems to be virtually no possibility that any assignments of error will be drafted, reviewed, and submitted to this court within the 30 day



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 1 July 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

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

<b>UNITED STATES</b>	)	<b>No. ACM 40461</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Brandon P. CLARK</b>	)	
<b>Airman Basic (E-1)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Special Panel</b>

On 1 July 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Twelfth) requesting an additional thirty days to submit Appellant’s assignments of error brief. The Government opposes the motion.

This court held a status conference on 8 July 2024 to discuss the progress of Appellant’s case. Major Brittany M. Speirs represented the Government. Lieutenant Colonel Allen S. Abrams and Captain (Capt) Samantha M. Castanien represented Appellant. Capt Castanien anticipates filing Appellant’s assignments of error brief on or before the requested due date of 14 August 2024. Furthermore, Capt Castanien advised that Appellant may raise an allegation of ineffective assistance of counsel. The court advised the Government to be prepared for compressed deadlines to request and submit any affidavits from trial defense counsel in the event Appellant raises an allegation of ineffective assistance of counsel, if the Government was inclined to pursue such affidavits.

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 8th day of July, 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Twelfth) is **GRANTED**. Appellant shall file any assignments of error not later than **14 August 2024**.

Appellant's counsel is advised that given the number of enlargements granted thus far, any further requests for an enlargement of time will not be granted absent extraordinary circumstances.



FOR THE COURT

 OLGA STANFORD, Capt, USAF  
Commissioner 

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

<b>UNITED STATES,</b>	)	<b>MOTION TO WITHDRAW</b>
<i>Appellee,</i>	)	<b>FROM APPELLATE REVIEW</b>
	)	<b>AND ATTACH</b>
v.	)	
	)	Before Special Panel
Airman Basic (E-1)	)	
<b>BRANDON P. CLARK,</b>	)	No. ACM 40461
United States Air Force,	)	
<i>Appellant.</i>	)	17 July 2024

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

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Airman Basic Brandon P. Clark (Appellant) moves to withdraw his case from appellate review.

Appellant has fully consulted with Captain Samantha Castanien, his appellate defense counsel, regarding his appeal and 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 A.F. CT. CRIM. APP. R. 23(b) and 23.3(b), undersigned counsel asks this Court to attach the two-page document appended to this pleading to the record of this proceeding. The appended document, Appellant's completed DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Court's Rules of Practice and Procedure.

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

Respectfully submitted,

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

**CERTIFICATE OF FILING AND SERVICE**

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

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