

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIRST)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	27 April 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)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **5 July 2023**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 51 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 27 April 2023.

Respectfully submitted,

SPENCER R. NELSON, 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
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 1 May 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	28 June 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **4 August 2023**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 28 June 2023.

Respectfully submitted,

SPENCER R. NELSON, 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
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 29 June 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 2
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	28 July 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 September 2023**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started a review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 28 July 2023.

Respectfully submitted.

SPENCER R. NELSON, 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
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 2
)	

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

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

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

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 28 July 2023.

THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel, Government
Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

UNITED STATES	)	No. ACM 40429
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL CHANGE
Brandon A. WOOD)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 8th day of August, 2023,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to Panel 3 for appellate review.

This panel letter supersedes all previous panel assignments.



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FOURTH)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	25 August 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 October 2023**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 26 cases; 13 cases are pending initial AOE's before this Court. Counsel has two Supreme Court petitions for certiorari and one pending CAAF supplement. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Four Air Force Court cases have priority over the present case:

1. *United States v. Navarro Aguirre*, ACM 40354 – On 26 March 2022, pursuant to mixed pleas, a Military Judge and a mixed panel sitting as a general court-martial at Joint Base Lewis-McChord, WA, convicted Appellant of one charge, one specification of failure to obey a lawful order, in violation of Article 92, UCMJ; one charge, two specifications of wrongful use of controlled substances, in violation of Article 112a, UCMJ; one charge, one specification of reckless driving while using a controlled substance, in violation of Article 113, UCMJ; and one charge, two specifications of assault, in violation of Article 128, UCMJ.¹ R. at 209, 849. The Military Judge sentenced Appellant to be reprimanded; to be reduced to the grade of E-1; to forfeit all pay and allowances; to be confined for two years and two months; and to be discharged with a bad conduct service characterization. R. at 895. The Convening Authority took no action on the findings. ROT, Vol. 1, Convening Authority Decision on Action, 4 May 2022. The Convening Authority suspended the first six months of the adjudged forfeiture of total pay and allowances from the date of the entry of judgment and ordered it to be remitted without further action, unless the suspension was previously vacated. *Id.* The collection of the remaining total pay and allowances would begin at the end of the period of suspension, or sooner if vacated. *Id.* The Convening Authority approved the remainder of the sentence. *Id.* The Convening Authority

¹ Appellant was charged, but acquitted of various specifications.

approved the Appellant's request for waiver of all automatic forfeitures for a period of six months and directed them to Appellant's spouse. *Id.* The ROT consists of nine volumes, 14 Prosecution Exhibits, 16 Defense Exhibits, 47 Appellate Exhibits, and one Court Exhibit. The transcript is 896 pages. The Appellant is confined. Counsel has started an initial review of the case.

2. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. 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, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has not yet reviewed this case.

3. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening

Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

4. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 25 August 2023.

Respectfully submitted,

SPENCER R. NELSON, 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
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 28 August 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIFTH)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	26 September 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **2 November 2023**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 203 days have elapsed. On the date requested, 240 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 26 cases; 14 cases are pending initial AOE's before this Court. Counsel has two Supreme Court petitions for certiorari, one pending CAAF Supplement, and CAAF oral argument at the end of October. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Four Air Force Court cases have priority over the present case:

1. *United States v. Navarro Aguirre*, ACM 40354 – On 26 March 2022, pursuant to mixed pleas, a Military Judge and a mixed panel sitting as a general court-martial at Joint Base Lewis-McChord, WA, convicted Appellant of one charge, one specification of failure to obey a lawful order, in violation of Article 92, UCMJ; one charge, two specifications of wrongful use of controlled substances, in violation of Article 112a, UCMJ; one charge, one specification of reckless driving while using a controlled substance, in violation of Article 113, UCMJ; and one charge, two specifications of assault, in violation of Article 128, UCMJ.¹ R. at 209, 849. The Military Judge sentenced Appellant to be reprimanded; to be reduced to the grade of E-1; to forfeit all pay and allowances; to be confined for two years and two months; and to be discharged with a bad conduct service characterization. R. at 895. The Convening Authority took no action on the findings. ROT, Vol. 1, Convening Authority Decision on Action, 4 May 2022. The Convening Authority suspended the first six months of the adjudged forfeiture of total pay and allowances from the date of the entry of judgment and ordered it to be remitted without further action, unless the suspension was previously vacated. *Id.* The collection of the remaining total pay and allowances would begin at the end of the period of suspension, or sooner if vacated. *Id.* The

¹ Appellant was charged, but acquitted of various specifications.

Convening Authority approved the remainder of the sentence. *Id.* The Convening Authority approved the Appellant's request for waiver of all automatic forfeitures for a period of six months and directed them to Appellant's spouse. *Id.* The ROT consists of nine volumes, 14 Prosecution Exhibits, 16 Defense Exhibits, 47 Appellate Exhibits, and one Court Exhibit. The transcript is 896 pages. The Appellant is confined. Except for sealed materials, Counsel has reviewed the entire ROT, including the transcript. This Court granted the motion to view sealed materials and Counsel has coordinated with the Court to view them.

2. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. 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, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has not yet reviewed this case.

3. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official

statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

4. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 26 September 2023.

Respectfully submitted,

SPENCER R. NELSON, 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
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 September 2023.

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

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

UNITED STATES	)	No. ACM 40429
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Brandon A. WOOD)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 26 September 2023, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) 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 28th day of September, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **2 November 2023**.

Any subsequent motions for enlargement of time shall, in addition to the matters required under this court’s Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was advised of the request for an enlargement of time, and (3) whether Appellant agrees with the request for an enlargement of time.



FOR THE COURT

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	26 October 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **2 December 2023**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 24 cases; 14 cases are pending initial AOE's before this Court. Counsel has one Supreme Court petition for certiorari and two pending CAAF Supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Four Air Force Court cases have priority over the present case:

1. *United States v. Navarro Aguirre*, ACM 40354 – On 26 March 2022, pursuant to mixed pleas, a Military Judge and a mixed panel sitting as a general court-martial at Joint Base Lewis-McChord, WA, convicted Appellant of one charge, one specification of failure to obey a lawful order, in violation of Article 92, UCMJ; one charge, two specifications of wrongful use of controlled substances, in violation of Article 112a, UCMJ; one charge, one specification of reckless driving while using a controlled substance, in violation of Article 113, UCMJ; and one charge, two specifications of assault, in violation of Article 128, UCMJ.¹ R. at 209, 849. The Military Judge sentenced Appellant to be reprimanded; to be reduced to the grade of E-1; to forfeit all pay and allowances; to be confined for two years and two months; and to be discharged with a bad conduct service characterization. R. at 895. The Convening Authority took no action on the findings. ROT, Vol. 1, Convening Authority Decision on Action, 4 May 2022. The Convening Authority suspended the first six months of the adjudged forfeiture of total pay and allowances from the date of the entry of judgment and ordered it to be remitted without further action, unless the suspension was previously vacated. *Id.* The collection of the remaining total pay and allowances would begin at the end of the period of suspension, or sooner if vacated. *Id.* The Convening Authority approved the remainder of the sentence. *Id.* The Convening Authority

¹ Appellant was charged, but acquitted of various specifications.

approved the Appellant's request for waiver of all automatic forfeitures for a period of six months and directed them to Appellant's spouse. *Id.* The ROT consists of nine volumes, 14 Prosecution Exhibits, 16 Defense Exhibits, 47 Appellate Exhibits, and one Court Exhibit. The transcript is 896 pages. The Appellant is confined. Counsel has reviewed the entire ROT and is writing the AOE.

2. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. 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, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has not yet reviewed this case.

3. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening

Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

4. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 26 October 2023.

Respectfully submitted,

SPENCER R. NELSON, 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
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 30 October 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SEVENTH)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	22 November 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 January 2024**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has one Supreme Court petition for certiorari and two pending CAAF petitions and supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Three Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. 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, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has not yet reviewed this case.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant

to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

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

Respectfully submitted.

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 22 November 2023.

Respectfully submitted,

SPENCER R. NELSON, 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' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 28 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

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (EIGHTH)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	15 December 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his eighth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **31 January 2024**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 283 days have elapsed. On the date requested, 330 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has two pending CAAF petitions and supplements. Counsel is also starting leave as of the date of this filing until 28 December 2023. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Three Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. 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, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has reviewed the allied papers, all unsealed exhibits, and nearly half of the transcript.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official

statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 15 December 2023.

Respectfully submitted,

SPENCER R. NELSON, 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' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 19 December 2023.

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

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

UNITED STATES	)	No. ACM 40429
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Brandon A. WOOD)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 15 December 2023, 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 20th day of December, 2023,

ORDERED:

Appellant’s Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **31 January 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
Acting Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (NINTH)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	24 January 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his ninth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **1 March 2024**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 323 days have elapsed. On the date requested, 360 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has four pending CAAF petitions and supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Three Air Force Court cases have priority over the present case:

1. *United States v. Ramirez*, No. ACM 40373 – On 26 August 2022, contrary to his pleas, a Military Judge sitting at a general court-martial at Robins Air Force Base, Georgia, convicted Appellant of one charge, one specification of wrongfully possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 705. The Military Judge sentenced Appellant to be reprimanded, confined for 14 months, and dishonorably discharged. R. at 767. 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, 26 Sep 2022. The Convening Authority denied Appellant's request for waiver of automatic forfeitures. *Id.* The ROT consists of seven volumes, 16 prosecution exhibits, 40 defense exhibits, and 35 appellate exhibits. The transcript is 767 pages. The Appellant is not confined. Counsel has reviewed the entire record, including sealed materials, and is currently drafting the AOE. Barring unforeseen circumstances, counsel does not intend to file another request for an EOT.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official

statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 24 January 2024.

Respectfully submitted,

SPENCER R. NELSON, 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' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 26 January 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (TENTH)
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	20 February 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his tenth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **31 March 2024**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 390 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined.

Appellate counsel is currently assigned 23 cases; 12 cases are pending initial AOE's before this Court. Counsel has four pending CAAF petitions and supplements and one pending Supreme Court Reply Brief (Answer due to Court and Counsel today, 20 February 2024). Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Since his last extension of time request, Counsel has:

1. Finished reviewing the record in *United States v. Ramirez*, No. ACM 40373 and filed a 6-issue 116-page AOE.
2. Reviewed the record in *United States v. Ellis*, No. ACM 40430 and identified several issues.
3. Prepared for, and participated in, one moot as a judge

Three Air Force Court cases have priority over the present case:

1. *United States v. Ellis*, No. ACM 40430¹ – On 21 October 2022, in accordance with his pleas, a Military Judge in a general court-martial, at Spangdahlem Air Base, Germany, convicted Appellant of one charge, two specifications of assault, in violation of Article 128, UCMJ; and an additional charge, three specifications of assault in violation of Article 128, UCMJ. ROT, Vol. 1, Entry of Judgment, dated 13 December 2022.² R. at 359. The Military Judge sentenced Appellant to be reprimanded, to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 640 days, to be discharged from the service with a bad conduct service

¹ On 29 January 2024, this Court (Panel 1) approved Appellant's request for EOT 9. Without prior notice and without any status conferences, this Court said, "Given the nature of the case and the number of enlargements granted thus far, the court is not willing to grant any further enlargements of time absent exceptional circumstances." As such, Counsel has changed the prioritization of this guilty plea case over the two cases docketed before this case.

² Various charges and specifications were withdrawn and dismissed with prejudice.

characterization. *Id.*; R. at 398. The Convening Authority took no actions on the findings, sentence, and denied Appellant's requests for deferments. ROT, Vol. 1, Convening Authority Decision on Action, 26 November 2022. The ROT consists of seven volumes, nine prosecution exhibits, ten defense exhibits, 38 appellate exhibits, and one court exhibit. Appellant is not confined. Except for sealed materials, Counsel has reviewed the entire record. Counsel filed a motion to view sealed materials on 15 February 2024 which this Court has not yet ruled on. Counsel is finalizing Appellant's brief and, barring unforeseen circumstances, Counsel intends to file on 1 March 2024.

2. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has not yet started his review of this case.

3. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas,

convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

Given this Court's order on 20 December 2023 stating that this Court will "continue to closely examine any further requests for an enlargement of time," Counsel states the following:

1. Counsel intends to file *Ellis* on or before 1 March 2024.
2. After Counsel files *Ellis*, he will review *Serjak* in conjunction with the matters that follow.
3. Counsel will respond to the Solicitor General's Answer in *United States v. Cunningham*, 83 M.J. 367, No. 23-0027, 2023 CAAF LEXIS 520 (C.A.A.F. July 21, 2023), *Petition for Writ of Certiorari filed* which is due today, 20 February 2024 to the Supreme Court and Counsel.
4. Counsel is currently drafting and intends to submit a CAAF Supplement in *United States v. Casillas*, No. ACM 40302, 2023 CCA LEXIS 527 (A.F. Ct. Crim. App. Dec. 15, 2023) on 4 March 2024.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 20 February 2024.

Respectfully submitted,

SPENCER R. NELSON, 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' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 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 year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities.

Of particular note, Appellant's counsel has not yet started their review of the record of trial, and that review cannot begin until they have completed the review of the records in both *United States v. Serjak* and *United States v. Van Velson*, neither of which they have even begun. It appears exceedingly unlikely Appellant's counsel will complete the review in this case and file any assignments of error before the 18-month standard has nearly expired.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 22 February 2024.

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

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF TIME (ELEVENTH)
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 3
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	21 March 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his eleventh enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 April 2024**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 380 days have elapsed. On the date requested, 420 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined.

Appellate counsel is currently assigned 22 cases; 11 cases are pending initial AOE's before this Court. Counsel has three pending CAAF petitions and supplements. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Since his last extension of time request, Counsel has:

1. Reviewed the record and filed a motion to withdraw from appellate review in *United States v. Ellis*, No. ACM 40430.
2. Drafted and filed a five-issue, 38-page CAAF Supplement in *United States v. Casillas*, No. 24-0089/AF, 2024 CAAF LEXIS 88 (C.A.A.F. Feb. 13, 2024)
3. Drafted and filed a two-issue, 24-page CAAF Supplement in *United States v. Saul*, No. 24-0098/AF, 2024 CAAF LEXIS 114 (C.A.A.F. Feb. 26, 2024).
4. Drafted a three-issue, 39-page CAAF Supplement for submission on 27 March in *United States v. Fernandez*, No. 24-0101/AF, 2024 CAAF LEXIS 140 (C.A.A.F. Mar. 7, 2024)
5. Prepared for, and participated in, three moots as a judge

Two Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for

deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed the entire ROT except of unsealed materials and the transcript. Counsel has started his review of the transcript.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant's clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has not yet started his review of this case.

Given this Court's order on 20 December 2023 stating that this Court will "continue to closely examine any further requests for an enlargement of time," Counsel states the following:

1. Counsel is currently TDY at _____ for the Accident Investigation Board Course in preparation for his upcoming PCA _____ As such, his primary duty has been attending class, not his appellate defense duties.
2. Counsel is diligently working on *Serjak*.
3. After *Serjak* is submitted, both *Van Velson* and this case are guilty pleas which Counsel believes he will be able to review quickly.

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

Respectfully submitted

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 21 March 2024.

Respectfully submitted,

SPENCER R. NELSON, 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' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 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 year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 4 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not yet started review of the record of trial at this late stage of the appellate process.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 22 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 40429
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Brandon A. WOOD)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 21 March 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Eleventh) 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 22d day of March 2024,


ORDERED:

Appellant’s Motion for Enlargement of Time (Eleventh) is **GRANTED**. Appellant shall file any assignments of error not later than **30 April 2024**.

Appellant’s counsel is advised that should Appellant deem it necessary to request any additional enlargements of time, the court will likely require a status conference prior to ruling on any additional enlargements of time.



FOR THE COURT

OLGA STANFORD  Capt, USAF
Commissioner

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

UNITED STATES	)	No. ACM 40429
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL
Brandon A. WOOD	)	CHANGE
Senior Airman (E-4))	
U.S. Air Force)	
<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 3 and referred to a Special Panel for appellate review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
GRUEN, PATRICIA A., 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

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (TWELFTH)
)	
v.	)	Before Special Panel
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	19 April 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his twelfth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 May 2024**. The record of trial was docketed with this Court on 7 March 2023. From the date of docketing to the present date, 409 days have elapsed. On the date requested, 450 days will have elapsed.

On 18 October 2022, consistent with his pleas, a Military Judge in a general court-martial, at Barksdale Air Force Base, LA, convicted Appellant of one charge, one specification of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Record (R.) at 120. The Military Judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for 12 months, and to be dishonorably discharged from the service. R. at 155. The Convening Authority took no action on the findings, no action on the sentence, but approved Appellant’s request for waiver of automatic forfeitures. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action, dated 17 November 2022.

The ROT consists of eight volumes, four prosecution exhibits, five defense exhibits, 34 appellate exhibits, and two court exhibits. Appellant is not confined.

Appellate counsel is currently assigned 20 cases; 10 cases are pending initial AOE's before this Court. Counsel has one pending CAAF petition and supplement. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has not yet started his review of Appellant's case. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Since his last extension of time request, Counsel has:

1. Finalized and filed a three-issue, 39-page CAAF Supplement *United States v. Fernandez*, No. 24-0101/AF, 2024 CAAF LEXIS 140 (C.A.A.F. Mar. 7, 2024)
2. Drafted and filed a two-issue, 26-page CAAF Supplement in *United States v. Jackson*, No. 24-0106/AF, 2024 CAAF LEXIS 178 (C.A.A.F. Mar. 25, 2024)
3. Reviewed approximately 1,400 pages of transcript in *United States v. Serjak*, No. ACM 40392
4. Prepared for, and participated in, three moots as a judge

Two Air Force Court cases have priority over the present case:

1. *United States v. Serjak*, No. ACM 40392 – On 29 July 2022, contrary to his pleas, enlisted members in a General Court-Martial, at Royal Air Force Mildenhall, United Kingdom, convicted Appellant of one charge and one specification of assault, in violation of Article 128 Uniform Code of Military Justice (UCMJ); one charge, two specifications of sexual assault in violation of Article 120, UCMJ; and one charge and one specification of making a false official statement, in violation of Article 107 UCMJ. R. at 1413. The Military Judge sentenced Appellant to forfeit all pay and allowances, to be reduced to the grade of E-1, to be confined for 54 months and 100 days, and to be dishonorably discharged from the service. R. at 1481. The Convening Authority took no action on the findings, no action on the sentence, denied Appellant's request for deferment of the reduction in grade and automatic forfeitures, but approved Appellant's request for waiver of all automatic forfeitures for six months. ROT, Vol. 1, Convening Authority Decision

on Action, 19 August 2022. The ROT consists of 12 volumes, 14 prosecution exhibits, 10 defense exhibits, 3 court exhibits, and 84 appellate exhibits. Appellant is currently confined. Counsel has reviewed the entire ROT except of unsealed materials and the transcript. Counsel has reviewed the entire record, except for sealed materials, and is drafting the AOE.

2. *United States v. Van Velson*, No. ACM 40401 – On 3 October 2022, consistent with his pleas, a Military Judge sitting at a general court-martial at Laughlin Air Force Base, Texas, convicted Appellant of one charge, two specifications of possessing child pornography and using indecent language, in violation of Article 134, UCMJ. R. at 93. The Military Judge sentenced Appellant to 24 months confinement a dismissal from the service. R. at 236. The Convening Authority took no action on the findings and sentence; he considered Appellant’s clemency submission to include a request for deferment and waiver of automatic forfeitures, which he denied. ROT, Vol. 1, Convening Authority Decision on Action, 21 November 2022. The ROT consists of four volumes, nine prosecution exhibits, 14 defense exhibits, and 29 appellate exhibits. The transcript is 237 pages. The Appellant is confined. Counsel has reviewed the entire record except for sealed materials and the transcript.

Given this Court’s order on 22 March 2024 stating that “should Appellant deem it necessary to request any additional enlargements of time, the court will likely require a status conference prior to ruling on any additional enlargements of time,” Counsel states the following:

1. Counsel will not be requesting an additional extension of time request in *Serjak* and, barring unforeseen circumstances, will not do so in *Van Velson* either.
2. Counsel fully expects to start his review of this case, if not complete it, on or before the requested extension date (if this Court grants this request).

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 19 April 2024.

Respectfully submitted,

SPENCER R. NELSON, 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' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.)	
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, 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 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 a year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed more than 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 yet started review of the record of trial at this late stage of the appellate process.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 22 April 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 40429
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Brandon A. WOOD)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 19 April 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Twelfth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

On 24 April 2024, a status conference was held to discuss the status of this case. Major Spencer R. Nelson and Ms. Megan P. Marinos represented Appellant. Ms. Mary Ellen Payne represented Appellee. Major Nelson explained that he has two cases pending with this court which have a higher priority than Appellant’s case; however, he expects to submit the assignments of error in both cases to this court by 12 May 2024. In addition, Major Nelson indicated he had one supplement pending with the United States Court of Appeals for the Armed Forces. Major Nelson indicated that while he has not reviewed the record in Appellant’s case yet, he expects his review will be complete by 30 May 2024. Major Nelson confirmed Appellant consented to this motion.

The court has considered Appellant’s motion, Appellee’s opposition, prior filings and orders in this case, case law, and this court’s Rules of Practice and Procedure.

Accordingly, it is by the court on this 24th day of April, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Twelfth) is **GRANTED**. Appellant shall file any assignments of error not later than **30 May 2024**.



FOR THE COURT

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION TO EXAMINE SEALED
<i>Appellee,</i>	)	MATERIAL
)	
v.	)	Before Special Panel
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	16 May 2024
<i>Appellant.</i>)	

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

Pursuant to Rules 3.1 and 23.3(f) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel respectfully moves to examine the following sealed materials in Appellant’s record of trial:

1. Pros. Ex. 1, Stipulation of Fact, Attachments 2-7. Presented or reviewed at trial and ordered sealed: R. at 39-40.
2. App. Exs. V-VIII. Presented or reviewed at trial and ordered sealed: R. at 23-26.

The Military Judge did not issue an order sealing the relevant exhibits; rather, she ordered them to be sealed during the court-martial at the citations above. Trial Counsel, Defense Counsel, and the Military Judge presented or reviewed these materials at trial at the citations above.

Pursuant to 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(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d), 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(d), 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 material must be reviewed in order for counsel to provide "competent appellate representation." *Id.* Therefore, the examination of sealed materials is reasonably necessary to fulfill appellate defense counsel's responsibilities in this case, since counsel cannot perform his duty of representation under Article 70, UCMJ, 10 U.S.C. §870, without first reviewing the complete record of trial. Undersigned counsel needs to ensure the record of trial is complete and that the images meet the definition of child pornography as alleged. As to the Appellate Exhibits, counsel needs to review those to ensure trial defense counsel was effective in accepting the plea agreement which contained a waive all waivable motions provision.

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

Respectfully submitted,

SPENCER R. NELSON, 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 Government Trial and Appellate Division on 16 May 2024.

Respectfully submitted,

SPENCER R. NELSON, 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' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE
v.	)	SEALED MATERIALS
)	
Senior Airman (E-4)	)	ACM 40429
BRANDON A. WOOD, 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, 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 16 May 2024.

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

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

UNITED STATES	)	No. ACM 40429
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Brandon A. WOOD)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 16 May 2024, counsel for Appellant submitted a Motion to Examine Sealed Material, specifically Attachments 2–7 to Prosecution Exhibit 1, and Appellate Exhibits V, VI, VII, and VIII, all of which had been ordered sealed by the military judge. Trial counsel, trial defense counsel, and the military judge reviewed these materials at Appellant’s court-martial.

On 16 May 2024, the Government responded and does not oppose Appellant’s motion, provided counsel for the Government is also permitted to view 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.).

Accordingly, it is by the court on this 17th day of May, 2024,

ORDERED:

Appellant’s Motion to Examine Sealed Material dated 16 May 2024 is **GRANTED**.

Counsel for Appellant and counsel for the Government may examine **Attachments 2–7 to Prosecution Exhibit 1, and Appellate Exhibits V, VI, VII, and VIII**.

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

Counsel will not photocopy, photograph, or otherwise reproduce the sealed

material, nor disclose nor make available its contents to any other individual, without this 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

UNITED STATES,	)	MERITS BRIEF
<i>Appellee,</i>)	
)	
v.	)	Special Panel
)	
Senior Airman (E-4),	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	28 May 2024
<i>Appellant.</i>)	

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

Submission of Case Without Specific Assignments of Error

The undersigned appellate defense counsel attests he has, on behalf of Senior Airman (SrA) Brandon A. Wood, Appellant, carefully examined the record of trial in this case. Appellant does not admit the findings and sentence are correct in law and fact, but submits the case to this Honorable Court on its merits with no specific assignments of error. Appellant has conformed this merits brief to the format in Appendix B of this Honorable Court’s Rules of Practice and Procedure. Appellant understands this Court will exercise its independent “awesome, plenary, [and] *de novo* power” to review the entire record of this proceeding for factual and legal sufficiency, and for sentence propriety, and to “substitute its judgment” for that of the court below, as is provided for and required by Article 66(d), UCMJ, 10 U.S.C. §866(d) (2019). *United States v. Cole*, 31 M.J. 270, 272 (C.M.A. 1990); *United States v. Chin*, 75 M.J. 220 (C.A.A.F. 2016).

However, through undersigned counsel, Appellant personally raises one issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982) which is discussed in the attached Appendix A.


Respectfully submitted,

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Joint Base Andrews NAF, MD 20762-6604

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 28 May 2024.

Respectfully submitted,

 SPENCER R. NELSON, Maj, USAF
Appellate Defense Counsel
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APPENDIX A

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Senior Airman (SrA) Brandon A. Wood, through appellate defense counsel, personally requests that this Court consider the following matters:

I.

AS APPLIED TO SENIOR AIRMAN WOOD, THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION”¹ WHEN SENIOR AIRMAN WOOD WAS NOT CONVICTED OF A VIOLENT OFFENSE.

Additional Facts

After his conviction, the Government determined that SrA Wood’s case met the firearm prohibition under 18 U.S.C. § 922. *Entry of Judgment*. The Government did not specify why, or under which section his case met the requirements of 18 U.S.C. § 922. *Id.*

Standard of Review

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021) (citations omitted).

Law and Analysis

One problem with the Statement of Trial Results and Entry of Judgment is that the Government did not indicate which specific subsection of § 922 it relied on to find that SrA Wood fell under the firearm prohibition. Thus, SrA Wood is unable to argue which specific subsection of § 922 is unconstitutional in his case, although he knows it could not be the domestic violence provision given the facts of his case. Regardless, it appears that the Government cannot meet its

¹ *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022).

burden of proving a historical analog that barred offenders like SrA Wood from possessing firearms.

The test for applying the Second Amendment is:

When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

Bruen, 597 U.S. 1, 24 (quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 50 n.10 (1961)).

Last year, the Fifth Circuit assessed an appellant who was “involved in five shootings” and pleaded guilty to “possessing a firearm while under a domestic violence restraining order” in violation of § 922(g)(8). *United States v. Rahimi*, 61 F.4th 443, 448-49 (5th Cir. 2023), *argued*, 143 S. Ct. 2688 (Nov. 7, 2023). Vacating the conviction, the Court held that “§ 922(g)(8)’s ban on possession of firearms is an ‘outlier[] that our ancestors would never have accepted.’” *Id.* at 461 (quoting *Bruen*, 597 U.S. at 30).

In reaching that conclusion, the Fifth Circuit made three broad points. First, “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” 61 F.4th at 450 (quoting *Bruen*, 597 U.S. at 8). Therefore, the Government bears the burden of “justify[ing] its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* (quoting *Bruen*, 597 U.S. at 24).

Second, the Fifth Circuit recognized that *D.C. v. Heller*, 554 U.S. 570 (2008) and *Bruen* both contain language that could limit the Second Amendment’s application to “law-abiding, responsible citizens.” *Id.* at 451 (quoting *Heller*, 554 U.S. at 635). The Fifth Circuit explained that “*Heller*’s reference to ‘law-abiding, responsible’ citizens meant to exclude from the Court’s discussion groups that have historically been stripped of their Second Amendment rights, i.e.,

groups whose disarmament the Founders ‘presumptively’ tolerated or would have tolerated.” *Id.* at 452. Here the issue is whether the Founders would have “presumptively” tolerated a citizen being stripped of his right to keep and bear arms when he was not convicted of a violent offense. *Id.*

Third, the Fifth Circuit held that “[t]he Government fails to demonstrate that § 922(g)(8)’s restriction of the Second Amendment right fits within our Nation’s historical tradition of firearm regulation.” *Id.* at 460. If the Government failed to prove that our Nation’s historical tradition of firearm regulation did not include a violent offender who pled guilty to possessing a firearm while under a domestic violence restraining order, then it is questionable whether it can meet its burden for SrA Wood’s conviction when he was not convicted of a violent offense.

An additional argument bolsters SrA Wood’s position: The Fifth Circuit issued an opinion that held § 922(g)(3) unconstitutional. *United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023). In *Daniels*, the appellant was arrested for driving without a license, but the police officers found marijuana butts in his ashtray. 77 F.4th at *340. He was later charged and convicted of a violation of § 922(g)(3). *Id.* at 340-41. In finding § 922(g)(3) unconstitutional, the Fifth Circuit’s bottom line was:

[O]ur history and tradition may support some limits on an intoxicated person’s right to carry a weapon, but it does not justify disarming a sober citizen based exclusively on his past drug usage. Nor do more generalized traditions of disarming dangerous persons support this restriction on nonviolent drug users.

Id. at 340.

In *Lepore*, citing to the 2016 edition of the Rules for Courts-Martial, this Court held, “[T]he mere fact that a firearms prohibition annotation, not required by the Rules for Courts-Martial, was recorded on a document that is itself required by the Rules for Courts-Martial is not sufficient to bring the matter within our limited authority under Article 66, UCMJ.” 81 M.J. at 763. Despite the

court-martial order erroneously identifying that A1C Lepore fell under the firearms prohibition, this Court did not act because the “correction relates to a collateral matter and is beyond the scope of our authority under Article 66.” *Id.* at 760. But this Court emphasized, “To be clear, we do not hold that this court lacks authority to direct correction of errors in a promulgating order with respect to the findings, sentence, or action of the convening authority.” *Id.* at 763.

Six months after this Court’s decision in *Lepore*, the CAAF decided *United States v. Lemire*. In that decision, the CAAF granted Sergeant Lemire’s petition, affirmed the Army Court of Criminal Appeals’ decision, and “directed that the promulgating order be corrected to delete the requirement that Appellant register as a sex offender.” 82 M.J. 263, at n.* (C.A.A.F. 2022) (unpub. op.). The CAAF’s direction that the Army Court of Criminal Appeals fix—or order the Government to fix—the promulgating order, is at odds with this Court’s holding in *Lepore*.

The CAAF’s decision in *Lemire* reveals three things. First, the CAAF has the power to order the correction of administrative errors in promulgating orders—even via unpublished decisions regardless of whether the initial requirement was a collateral consequence. Second, the CAAF believes that Courts of Criminal Appeals have the power to address collateral consequences under Article 66 since it “directed” the Army Court of Criminal Appeals to fix—or have fixed—the erroneous requirement that Sergeant Lemire register as a sex offender. Third, if the CAAF and the CCAs have the power to fix administrative errors under Article 66 as they relate to collateral consequences, then perforce, they also have the power to address constitutional errors in promulgating orders even if the Court deems them to be a collateral consequence.

Additionally, *Lepore* is distinguishable from this case. In *Lepore*, this Court made clear that “[a]ll references in this opinion to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2016 ed.).” 81 M.J. at 760 n.1. This Court then

emphasized, “[T]he mere fact that a firearms prohibition annotation, *not required by the Rules for Courts-Martial*, was recorded on a document that is itself required by the Rules for Courts-Martial is not sufficient to bring the matter within our limited authority under Article 66, UCMJ.” *Id.* at 763 (emphasis added). The new 2019 rules that apply in this case, however, direct that both the Statement of Trial Results and the Entry of Judgment contain “[a]ny additional information . . . required under regulations prescribed by the Secretary concerned.” R.C.M. 1101 (a)(6); 1111(b)(3)(F). Department of the Air Force Instruction 51-201, *Administration of Military Justice*, dated 8 April 2022, para 13.3 required the Statement of Trial Results to include “whether the following criteria are met . . . firearm prohibitions.” As such, this Court’s analysis in *Lepore* is no longer controlling since the R.C.M. now requires—by incorporation—a determination on whether the firearm prohibition is triggered. Even if this Court does not find this argument persuasive, it still should consider the issue under *Lepore* since this issue is not an administrative fixing of paperwork, but an issue of constitutional magnitude.

WHEREFORE, SrA Wood requests this Court order the Government to correct the Statement of Trial Results by removing the unconstitutional firearms possession prohibition

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	ANSWER TO ASSIGNMENT OF
<i>Appellee,</i>	)	ERROR
)	
v.	)	Before Special Panel
)	
Senior Airman (E-4)	)	No. ACM 40429
BRANDON A. WOOD,)	
United States Air Force,	)	26 June 2024
<i>Appellant.</i>)	

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

ISSUE PRESENTED¹

AS APPLIED TO APPELLANT, THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION” WHEN APPELLANT WAS NOT CONVICTED OF A VIOLENT OFFENSE.

STATEMENT OF CASE

A court-martial composed of a military judge sitting alone convicted Appellant, pursuant to his plea agreement, of one specification of one charge of possession of child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ). (R. at 20-21, 78, 120; App. Ex. XXXI; *Statement of Trial Results* (STR), dated 18 October 2022; *Entry of Judgment* (EOJ), dated 13 December 2022). The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 12 months, and to be discharged with a dishonorable discharge. (R. at 155; *STR*; *EOJ*). The convening authority took no action on the findings or sentence but approved waiver of automatic forfeitures for a period of six months so

¹ Appellant raised this issue pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

pay and allowances could be directed to Appellant's fiancé for the benefit of Appellant's dependent child. (*Convening Authority Decision on Action Memorandum*, dated 17 November 2022).

STATEMENT OF FACTS

Appellant possessed child pornography, that is, five videos of a 16-year-old girl, whom he had been dating, masturbating, and another video of a child between the ages of 10 and 12 years who was masturbating. (R. at 62-66; Pros. Ex. 1).

ARGUMENT

THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT CORRECTLY ANNOTATED THAT APPELLANT'S CONVICTION, FOR A VIOLENT OFFENSE, REQUIRED THAT HE BE CRIMINALLY INDEXED PER THE FIREARM PROHIBITION UNDER 18 U.S.C. § 922.

Law and Analysis

Appellant asserts that 18 U.S.C. § 922 is unconstitutional as applied to him because he was convicted of a non-violent offense. (App. Br., Appendix A at 1-5.) Appellant asserts that any prohibitions on the possession of firearms imposed because of a non-violent offense runs afoul of the Second Amendment, U.S. CONST. AMEND. II, the Supreme Court's interpretation of that amendment in N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022) (analyzing New York's concealed carry regime), and the Fifth Circuit Court of Appeals' decision regarding 18 U.S.C. § 922(g)(8) in United States v. Rahimi, 61 F.4th 443, 461 (5th Cir. 2023), which the Supreme Court reversed on 21 June 2024. United States v. Rahimi, 602 U.S. ___, Docket No. 22-915, 2024 U.S.

LEXIS 2714 (21 June 2024) (slip op.). Appellant’s constitutional argument is without merit and is a collateral matter beyond this Honorable Court’s authority to review.

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

This Court recently held in its published opinion in United States v. Vanzant, No. ACM 22004, 2024 CCA LEXIS 215, __ M.J. __ (A.F. Ct. Crim. App. 28 May 2024), that 18 U.S.C. § 922(g)’s firearm prohibitions and the indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence, so they are beyond the scope of this Court’s jurisdiction under Article 66, UCMJ. Id. at *24.

B. Appellant’s reliance on his conviction being for other than a violent offense is misplaced, because it was a “crime of violence.”

Appellant’s argument presumes, incorrectly, that his crime was not a violent offense. The Federal Bail Reform Act, 18 U.S.C. § 3156(a)(4)(C), defines the term “crime of violence” to include Child Pornography; that is, a felony under Chapter 110 of the U.S. Code, including 18 U.S.C. § 2252A. Also, 18 U.S.C. § 3142, which governs the detention or release of a defendant pending trial in Federal court, puts those charged with child pornography crimes squarely in the same class of dangerousness as those accused of drug trafficking, firearms offenses, and terrorism. See Section 3142(e)(3)(E) (establishing statutory presumption of danger to the community).

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

Even if this Court has jurisdiction to review this issue, Appellant is not entitled to relief. The Gun Control Act of 1968, 18 U.S.C. § 922, makes it unlawful for any person, *inter alia*, “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year” to possess a firearm. Appellant was found guilty of possession of child pornography, in violation of Article 134, UCMJ, which is a crime punishable by imprisonment for a term exceeding

one year, that is, by 10 years of confinement. Manual for Courts-Martial, part IV, para. 93.d(1) (2019 ed.).²

The Staff Judge Advocate (SJA) followed the appropriate Air Force regulations in signing the first indorsement to the STR and EOJ. Appellant received a conviction for a qualifying offense under 18 U.S.C. § 922(g)(1). *See* DAFI 51-201, dated 14 April 2022, para. 29.32.

Furthermore, para. 29.30. to that DAFI, which applies in this case, shows the SJA correctly annotated the firearm prohibition on the first indorsement:

If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved.

Para. 29.30.1.1.

Persons who have been discharged from the Armed Forces under dishonorable conditions . . . This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List ... This prohibition does not take effect until after the discharge is executed.

Para. 29.30.5.

Appellant's conviction and sentence qualified him for criminal indexing per 18 U.S.C. § 922(g)(1), and the first indorsements to the EOJ and STR properly annotated the prohibition in accordance with DAFI 51-201.³ Thus, there is no error for this Court to correct.

² Persons *accused* of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial, also may not possess a firearm. *See* Department of the Air Force Instruction (DAFI) 51-201, dated 14 April 2022, para. 29.30.8 (citing 18 U.S.C. § 922(n)).

³ While the Statement of Trial Results and Entry of Judgment Indorsements indeed annotate the firearm prohibition, they are not what legally mandates the indexing. DAFI 51-201 is the regulation that requires indexing and contains the detailed requirements that mandate notification to relevant law enforcement agencies. Appellant's challenge here is thus misplaced.

D. The Firearm Possession Prohibitions in the Gun Control Act of 1968 are Constitutional.

In Bruen, the Supreme Court held the standard for applying the Second Amendment is:

When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

597 U.S. at 24. In his concurrence, Justice Kavanaugh noted the Supreme Court established in both District of Columbia v. Heller, 554 U.S. 570 (2008) (finding that the Second Amendment is an individual, not collective, right), and McDonald v. City of Chicago, 561 U.S. 742 (2010) (applying that right to the states), that the Second Amendment “is neither a regulatory straight jacket nor a regulatory blank check.” Id. at 30 (Kavanaugh, J., concurring) (citations omitted). Accordingly, the proper interpretation of the Second Amendment allows for a “variety” of gun regulations. Id. (citing Heller, 554 U.S. at 636).

The majority opinions in Heller and McDonald also stand for the principle that the right secured by the Second Amendment is not unlimited:

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose *[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.*

Heller, 554 U.S. at 573 (emphasis added).

Appellant acknowledges that both Bruen and Heller limit the application of the Second Amendment to “law abiding, responsible citizens.” (App. Br. at 2.) Even so, Appellant

nonetheless cites to Rahimi for the proposition that the Government cannot prove that Appellant’s firearm prohibition for a non-violent offense is in keeping with the United States’ historical tradition of firearm regulation. (Id. at 3.) However, that is contrary to what the Fifth Circuit held in Rahimi. That court concluded that the term “law abiding, responsible citizens,” was “shorthand in explaining that [Heller’s] holding ... should not ‘be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill[.]’” Rahimi, 61 F.4th at 451 (citing Heller, 554 U.S. at 626-627). The Fifth Circuit in Rahimi went on to assert that Bruen’s reference to “ordinary, law abiding” citizens was no different than Heller—it was meant to exclude “from the Court’s discussion groups that have historically been stripped of their Second Amendment Rights[.]” Id.

The Supreme Court subsequently reversed Rahimi but reiterated Heller’s confirmation that prohibiting felons from possessing firearms is “presumptively lawful.” Rahimi, 602 U.S. at 15; *see also* Id. (Thomas, J., dissenting) (“Just as important as §922(g)(8)’s express terms is what it leaves unsaid. Section 922(g)(8) does not require a finding that a person has ever committed a crime of domestic violence. It is not triggered by a criminal conviction or a person’s criminal history, unlike other §922(g) subsections [such as §922(g)(1)].”).

In this case, Appellant has been convicted of an offense punishable by well over a year of confinement (*i.e.*, a felony). He is thus prohibited from owning a firearm under 18 U.S.C. § 922(g)(1). The Supreme Court acknowledges that felony convictions are part of the United States’ longstanding tradition on firearm prohibitions. Moreover, these cases do not distinguish between violent and non-violent felonies—prior to Bruen, the Fifth Circuit opined, “[i]rrespective of whether [an] offense was violent in nature, a felon has shown manifest disregard for the rights of others. He may not justly complain of the limitation on his liberty when his possession of firearms

would otherwise threaten the security of his fellow citizens.” United States v. Everist, 368 F.3d 517, 519 (5th Cir. 2004). The Court found that limiting a felon’s ability to keep and possess firearms was not inconsistent with the “right of Americans generally to individually keep and bear their private arms as historically understood” in the United States. Id.; *accord* Folajtar v. Attorney General of the United States, 980 F.3d 897 (3rd Cir. 2020) (upholding the constitutionality of 18 U.S.C. § 922(g)(1) as applied to felons—including non-violent felons—based upon the Second Amendment’s history and tradition). Thus, whether Appellant’s crime constituted a violent or non-violent offense would not matter for purposes of restricting Appellant’s ability to own a firearm.

Appellant’s conviction for possession of child pornography, which was punishable by more than one year of confinement, proves that he falls squarely into the categories of individuals who should be prohibited from possessing a firearm. Thus, the Indorsements in the Entry of Judgment and Statement of Trial Results correctly annotated that Appellant is subject to the prohibitions of 18 U.S.C. 922. Appellant is not entitled to relief.

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant’s claims and affirm the findings and sentence in this case.

STEVEN R. KAUFMAN
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 26 June 2024.

STEVEN R. KAUFMAN
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force