

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. 1
)	
Senior Airman (E-4),	)	No. ACM S32757
NYSHA D.G. JACKSON,)	
United States Air Force,	)	27 October 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **4 January 2024**. The record of trial was docketed with this Court on 6 September 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,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 27 October 2023.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, 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 S32757
NYSHA D.G. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 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 (SECOND)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4),	)	No. ACM S32757
NYSHA D.G. JACKSON,)	
United States Air Force,	)	22 December 2023
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 February 2024**. The record of trial was docketed with this Court on 6 September 2023. From the date of docketing to the present date, 107 days have elapsed. On the date requested, 150 days will have elapsed.

On 13 June 2023, Appellant was tried by a special court-martial at Minot Air Force Base, North Dakota. Consistent with her pleas, the military judge convicted Appellant of one charge and one specification of conspiracy in violation of Article 81, Uniform Code of Military Justice (UCMJ) and one charge and specification of possession of a controlled substance with intent to distribute in violation of Article 112a, UCMJ. R. at 57.¹ The military judge sentenced Appellant to 120 days of confinement, reduction to the grade of E-1, and a reprimand. R. at 106. The convening authority took no action on the findings or sentence adjudged by the court-martial.

¹ Other preferred charges against Appellant, including one charge and specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ; and false official statement in violation of Article 107, UCMJ, were withdrawn with prejudice.

Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. SrA Nysya D.G. Jackson*, dated 10 July 2023.

The record of trial consists of two volumes. The transcript is 106 pages. There are five prosecution exhibits, four defense exhibits, and three appellate exhibits. Appellant is not currently in confinement. Undersigned counsel has not yet completed an initial review of the ROT.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his 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,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, 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 S32757
NYSHA D.G. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

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

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4),	)	No. ACM S32757
NYSHA D.G. JACKSON,)	
United States Air Force,	)	26 January 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **4 March 2024**. The record of trial was docketed with this Court on 6 September 2023. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 13 June 2023, Appellant was tried by a special court-martial at Minot Air Force Base, North Dakota. Consistent with her pleas, the military judge convicted Appellant of one charge and one specification of conspiracy in violation of Article 81, Uniform Code of Military Justice (UCMJ) and one charge and specification of possession of a controlled substance with intent to distribute in violation of Article 112a, UCMJ. R. at 57.¹ The military judge sentenced Appellant to 120 days of confinement, reduction to the grade of E-1, and a reprimand. R. at 106. The convening authority took no action on the findings or sentence adjudged by the court-martial.

¹ Other preferred charges against Appellant, including one charge and specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ; and false official statement in violation of Article 107, UCMJ, were withdrawn with prejudice.

Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. SrA Nyscha D.G. Jackson*, dated 10 July 2023.

The record of trial consists of two volumes. The transcript is 106 pages. There are five prosecution exhibits, four defense exhibits, and three appellate exhibits. Appellant is not currently in confinement. Undersigned counsel has not yet completed an initial review of the ROT.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. This includes submission of a petition and supplement for review before the Court of Appeals for the Armed Forces in the matter of *U.S. v. Holt*, ACM ACM 40390. 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,

MICHAEL J. BRUZYK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 January 2024.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, 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 S32757
NYSHA D.G. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 29 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 (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4),	)	No. ACM S32757
NYSHA D.G. JACKSON,)	
United States Air Force,	)	23 February 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 April 2024**. The record of trial was docketed with this Court on 6 September 2023. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 13 June 2023, Appellant was tried by a special court-martial at Minot Air Force Base, North Dakota. Consistent with her pleas, the military judge convicted Appellant of one charge and one specification of conspiracy in violation of Article 81, Uniform Code of Military Justice (UCMJ) and one charge and specification of possession of a controlled substance with intent to distribute in violation of Article 112a, UCMJ. R. at 57.¹ The military judge sentenced Appellant to 120 days of confinement, reduction to the grade of E-1, and a reprimand. R. at 106. The convening authority took no action on the findings or sentence adjudged by the court-martial.

¹ Other preferred charges against Appellant, including one charge and specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ; and false official statement in violation of Article 107, UCMJ, were withdrawn with prejudice.

Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. SrA Nyssha D.G. Jackson*, dated 10 July 2023.

The record of trial consists of two volumes. The transcript is 106 pages. There are five prosecution exhibits, four defense exhibits, and three appellate exhibits. Appellant is not currently in confinement. Undersigned counsel has not yet completed an initial review of the ROT.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel's highest priority is completing an assignment of errors for *United States v. Scott*, ACM 40411. That case is on its 10th enlargement of time and a submission is due on 2 March 2024. Additionally, counsel is at work in a supplement for petition for review before the Court of Appeals for the Armed Forces which is due on 28 February 2024. 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,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 23 February 2024.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, 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 S32757
NYSHA D.G. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

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

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FIFTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4),	)	No. ACM S32757
NYSHA D.G. JACKSON,)	
United States Air Force,	)	25 March 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **3 May 2024**. The record of trial was docketed with this Court on 6 September 2023. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 13 June 2023, Appellant was tried by a special court-martial at Minot Air Force Base, North Dakota. Consistent with her pleas, the military judge convicted Appellant of one charge and one specification of conspiracy in violation of Article 81, Uniform Code of Military Justice (UCMJ) and one charge and specification of possession of a controlled substance with intent to distribute in violation of Article 112a, UCMJ. R. at 57.¹ The military judge sentenced Appellant to 120 days of confinement, reduction to the grade of E-1, and a reprimand. R. at 106. The convening authority took no action on the findings or sentence adjudged by the court-martial.

¹ Other preferred charges against Appellant, including one charge and specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ; and false official statement in violation of Article 107, UCMJ, were withdrawn with prejudice.

Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. SrA Nysya D.G. Jackson*, dated 10 July 2023.

The record of trial consists of two volumes. The transcript is 106 pages. There are five prosecution exhibits, four defense exhibits, and three appellate exhibits. Appellant is not currently in confinement. Undersigned counsel has not yet completed an initial review of the ROT.

Undersigned counsel is currently assigned 14 cases; 12 cases are pending initial AOE's before this Court. Of those, the following three cases have priority over this one:

- 1) *United States v. Schneider*, ACM 40403 - The record of trial consists of three prosecution exhibits, 26 defense exhibits, and eight appellate exhibits; the transcript is 369 pages. Appellant is not currently confined. Undersigned counsel has completed reviewing the record of trial and is currently drafting an assignment of errors due for submission on 9 April 2024. This case is on its 12th and final enlargement of time.
- 2) *United States v. Cassaberry-Folks*, ACM 40444 - The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel has begun, but not yet completed review of the record of trial. This case is on its ninth enlargement of time.
- 3) *United States v. Bates*, ACM S32752 – The record of trial consists of two volumes. The transcript is 176 pages. There are 11 Prosecution Exhibits, ten Defense Exhibits, and five Appellate Exhibits. Undersigned counsel has completed an initial review of the record of trial. This case is on its ninth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel's primary focus is on completion of the assignment of error for *United States v. Schneider*. This will occupy the

majority of counsel's time until completion, after which counsel has two other cases with high numbered enlargements of time which need resolution. 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,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 25 March 2024.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, 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 S32757
NYSHA D.G. JACKSON, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 25 March 2024.

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

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

UNITED STATES <i>Appellee</i>	)	No. ACM S32757
)	
)	
v.)	
)	
Nysha D.G. JACKSON Senior Airman (E-4) U.S. Air Force <i>Appellant</i>	)	NOTICE OF PANEL CHANGE
)	

It is by the court on this 30th day of April, 2024,

ORDERED:

The record of trial in the above styled matter is withdrawn from Panel 1 and referred to a Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:

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

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 (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Senior Airman (E-4),	)	No. ACM S32757
NYSHA D.G. JACKSON,)	
United States Air Force,	)	26 April 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **2 June 2024**. The record of trial was docketed with this Court on 6 September 2023. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 13 June 2023, Appellant was tried by a special court-martial at Minot Air Force Base, North Dakota. Consistent with her pleas, the military judge convicted Appellant of one charge and one specification of conspiracy in violation of Article 81, Uniform Code of Military Justice (UCMJ) and one charge and specification of possession of a controlled substance with intent to distribute in violation of Article 112a, UCMJ. R. at 57.¹ The military judge sentenced Appellant to 120 days of confinement, reduction to the grade of E-1, and a reprimand. R. at 106. The convening authority took no action on the findings or sentence adjudged by the court-martial.

¹ Other preferred charges against Appellant, including one charge and specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ; and false official statement in violation of Article 107, UCMJ, were withdrawn with prejudice.

Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. SrA Nysya D.G. Jackson*, dated 10 July 2023.

The record of trial consists of two volumes. The transcript is 106 pages. There are five prosecution exhibits, four defense exhibits, and three appellate exhibits. Appellant is not currently in confinement. Undersigned counsel has completed an initial review of the ROT.

Undersigned counsel is currently assigned 19 cases; 15 cases are pending initial AOE before this Court. Of those, the following three cases are undersigned counsel's highest priorities:

- 1) *United States v. Bates*, ACM S32752 – The record of trial consists of two volumes. The transcript is 176 pages. There are 11 Prosecution Exhibits, ten Defense Exhibits, and five Appellate Exhibits. Undersigned counsel has completed drafting a four-issue assignment of errors and submitted it for leadership review. This case is on its eleventh and final enlargement of time.
- 2) *United States v. Cassaberry-Folks*, ACM 40444 - The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel has completed initial review of the record of trial and identified five issues for an AOE. This case is on its tenth enlargement of time and due for submission on 6 May 2024.
- 3) *United States v. Hilton*, ACM 40500 - The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. Undersigned counsel has not yet completed an initial review of the ROT. This case is on its seventh enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel's highest priority is submission of an assignment of errors in *United States v. Bates*. Following that, counsel is working

diligently to complete work on an assignment of errors in *United States v. Cassaberry-Folks*. 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,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 April 2024.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, 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 (SIXTH)
)	
	)	Before Panel No. 1
Senior Airman (E-4))	
NYSHA D.G. JACKSON,	)	ACM S32757
United States Air Force)	
<i>Appellant.</i>	)	30 April 2024

**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 (Sixth) to file an Assignment of Error in this case.

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 30 April 2024.

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

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

UNITED STATES	)	No. ACM S32757
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Nysha D.G. JACKSON)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 26 April 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Sixth) 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 30th day of April, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Sixth) is **GRANTED**. Appellant shall file any assignments of error not later than **2 June 2024**.

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 (SEVENTH)
)	
v.	)	Before a Special Panel
)	
Senior Airman (E-4),	)	No. ACM S32757
NYSHA D.G. JACKSON,)	
United States Air Force,	)	23 May 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for her seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **2 July 2024**. The record of trial was docketed with this Court on 6 September 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 13 June 2023, Appellant was tried by a special court-martial at Minot Air Force Base, North Dakota. Consistent with her pleas, the military judge convicted Appellant of one charge and one specification of conspiracy in violation of Article 81, Uniform Code of Military Justice (UCMJ) and one charge and specification of possession of a controlled substance with intent to distribute in violation of Article 112a, UCMJ. R. at 57.¹ The military judge sentenced Appellant to 120 days of confinement, reduction to the grade of E-1, and a reprimand. R. at 106. The convening authority took no action on the findings or sentence adjudged by the court-martial.

¹ Other preferred charges against Appellant, including one charge and specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ; and false official statement in violation of Article 107, UCMJ, were withdrawn with prejudice.

Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. SrA Nysha D.G. Jackson*, dated 10 July 2023.

The record of trial consists of two volumes. The transcript is 106 pages. There are five prosecution exhibits, four defense exhibits, and three appellate exhibits. Appellant is not currently in confinement. Undersigned counsel has completed an initial review of the ROT. Appellant has been advised of his right to a timely appeal, as well as the request for an enlargement of time. Appellant has agreed to the request for an enlargement of time.

Undersigned counsel is currently assigned 20 cases; 14 cases are pending initial AOE's before this Court. Of those, the following cases are counsel's highest priorities:

- 1) *In re A.G.*, Misc. Dkt. 2024-05 – This is a petition for extraordinary relief filed by an individual claiming Article 6b, UCMJ, status. A response from the real party in interest is due to this Court on 28 May 2024.
- 2) *United States v. Cassaberry-Folks*, ACM 40444 – The record of trial consists of seven volumes. The transcript is 375 pages. There are four Prosecution Exhibits, three Defense Exhibits, one Court Exhibit and 11 Appellate Exhibits. Undersigned counsel is working towards completion of a final drafted assignment of errors. This case is on its eleventh and final enlargement of time and due for submission on 31 May 2024.
- 3) *United States v. Hilton* – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its seventh enlargement of time. Undersigned counsel has not yet completed an initial review of the record of trial.
- 4) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial

from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 1134 page transcript. This case is on its fifth enlargement of time. Undersigned counsel has not yet completed an initial review of the record of trial.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Undersigned counsel is hard at work completing briefs for both *In re AG* and *United States v. Cassaberry-Folks*, which are both due this Court within days of each other. Additionally, undersigned counsel is taking leave from

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,

MICHAEL J. BRUZYK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 23 May 2024.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
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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 S32757
NYSHA D.G. JACKSON, 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 nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 28 May 2024.

BRITTANY M. SPEIRS, Maj, USAFR
Appellate Government Counsel
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United States Air Force

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	BRIEF ON BEHALF OF
	)	APPELLANT
)	
v.)	
	)	Before Panel
Senior Airman (E-4), Nysha D.G. Jackson United States Air Force, <i>Appellant.</i>	)	No. ACM S32757
	)	26 June 2024

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

Assignment of Error

**WHETHER THE MISAPPLICATION OF 18 U.S.C. § 922 TO APPELLANT
UNCONSTITUTIONALLY DEPRIVED HER OF HER RIGHT TO BEAR
ARMS BASED ON HER NONVIOLENT CONVICTION AT A SPECIAL
COURT-MARTIAL.**

Statement of the Case

On 13 June 2023, Appellant was tried by a special court-martial at Minot Air Force Base, North Dakota. Consistent with her pleas, the military judge convicted Appellant of one charge and one specification of conspiracy in violation of Article 81, Uniform Code of Military Justice (UCMJ) and one charge and specification of possession of a controlled substance with intent to distribute in violation of Article 112a, UCMJ. R. at 57.¹ The military judge sentenced Appellant to 120 days of confinement, reduction to the grade of E-1, and a reprimand. R. at 106. The convening authority took no action on the findings or sentence adjudged by the court-martial.

¹ Other preferred charges against Appellant, including one charge and specification of wrongful use of a controlled substance in violation of Article 112a, UCMJ; and false official statement in violation of Article 107, UCMJ, were withdrawn and dismissed with prejudice.

Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. SrA Nyssha D.G. Jackson*, dated 10 July 2023.

The Entry of Judgment and the Statement of Trial Results (STR) note that as a result of Appellant’s conviction, an 18 U.S.C. §922 Firearm Prohibition is triggered. EOJ; STR, dated 13 June 2023. Neither of these documents stated which provisions of 18 U.S.C. § 922 apply to Appellant.

Statement of Facts

Appellant pled guilty and was convicted of conspiring with her then-live-in boyfriend, Mr. R , to distribute marijuana and possession of marijuana with the intent to distribute. ROI at 10. Specifically, Appellant knew Mr. R kept various amounts of marijuana around the apartment they shared, and this was the same marijuana that was seized, and Appellant was charged with possessing. R. at 29. Appellant knew that Mr. R intended to distribute that marijuana, and on occasion assisted him by receiving information from potential buyers regarding the price and amount of marijuana they wanted to purchase and then passing that along to Mr. R . R. at 22.

While Appellant never intended to personally transfer any marijuana to another, the military judge found her intent to distribute plea provident under an aiding and abetting theory because she assisted Mr. R in committing the offense of distribution by passing along information from buyers to her then-boyfriend. R. at 55. Appellant was also charged with wrongful use of marijuana, but that specification was dismissed with prejudice. EOJ, dated 13 June 2023.

Argument

SENIOR AIRMAN JACKSON HAS BEEN UNCONSTITUTIONALLY DEPRIVED OF HER RIGHT TO POSSESS A FIREARM.

Standard of Review

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

Law and Analysis

18 U.S.C. § 922 does not apply to SrA Jackson.

1. 18 U.S.C. § 922 is unconstitutional as applied to Appellant.

Because of her guilty plea, SrA Jackson has been unconstitutionally deprived of her right to own a firearm. *EOJ*, dated 13 June 2023. The statute, 18 U.S.C. § 922(g), does not apply to SrA Jackson's case in any way. Factually, her conduct does not qualify under any of the nine enumerated categories that would bar her from owning firearms. And the Staff Judge Advocate's assertion that it does and entry into the criminal index is an unconstitutional deprivation of her right to bear arms.

Facially, the statute does not apply to SrA Jackson's conviction.

18 U.S.C. § 922(g) contains nine categories of persons who cannot own a firearm. 18 U.S.C. § 922(g)(1)-(9). Nothing in SrA Jackson's record of trial indicates she qualifies as one of these persons.

First, there is no evidence in the record—nor does any evidence exist—that SrA Jackson is a fugitive from justice (18 U.S.C. § 922(g)(2)), adjudicated as a mental defective or committed to a mental institution (18 U.S.C. § 922(g)(4)), an alien (*see* 18 U.S.C. § 922(g)(5)), a citizen who renounced her citizenship (18 U.S.C. § 922(g)(7)), subject to a court order to refrain from harassing,

stalking, or threatening an intimate partner (18 U.S.C. § 922(g)(8)), or convicted in any court of a misdemeanor crime of domestic violence 18 U.S.C. § 922(g)(9)).

Second, and related to the first, SrA Jackson is not an “unlawful user of or addicted to any controlled substance” under 18 U.S.C. § 922(g)(3)). SrA Jackson was not convicted of using any controlled substance. Moreover, there is no evidence that SrA Jackson was an “unlawful user” or addicted to any controlled substance. SrA Jackson was convicted of conspiracy and possession with intent to distribute marijuana because she added and abetted the person who distributed marijuana by passing along messages between the buyers and seller. R. at 55. Neither of these charges would fall under 18 U.S.C. § 922(g)(3)).

Third, SrA Jackson was not adjudged a dishonorable discharge, nor could she be. 18 U.S.C. § 922(g)(6); 10 U.S.C. § 819(a). The punitive discharge “maximum” at a special court-martial is a bad-conduct discharge. 10 U.S.C. § 819(a).

Finally, for similar reasons, SrA Jackson’s conviction does not fall under the last remaining category: 18 U.S.C. § 922(g)(1), “convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.” The definition of a “crime punishable by imprisonment for a term exceeding 1 year” is “any offense . . . for which the maximum penalty . . . is . . . imprisonment in excess of 1 year.” 27 C.F.R. 478.11 (2020). This definition is predicated on the meaning of “punishable,” i.e., whether the crime *can be* punished in excess of a year. *See* 12 Oxford English Dictionary 845 (2d ed. 1989) (“Liable to punishment; capable of being punished”); Webster’s Third New International Dictionary 1843 (1986) (“deserving of, or liable to, punishment: capable of being punished by law or right”); Black’s Law Dictionary 1110 (5th ed. 1979) (“Deserving of or capable or liable to punishment; capable of being punished by law or right”). The jurisdictional maximum for confinement at a special court-martial is one year. 10 U.S.C. 819(a). If adjudicated

at a special court-martial, no crime is capable of being punished by imprisonment for over a year.

Id. This interpretation reads the entire Uniform Code of Military Justice together to inform whether 18 U.S.C. § 922(g) applies to a particular offense.

While this Court has not opined on this issue,² DAFI 51-201, ¶ 29.30.1.1³ adopts this interpretation:

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. **Note:** *This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum.*

(Emphasis added). This position is repeated in AFMAN 71-102, ¶ 4.3.1. et. seq.:

Category 1: Persons who have been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (or a misdemeanor crime punishable by imprisonment over two years). . . . 4.3.1.2. Requires a crime be punishable by imprisonment for a term exceeding one year. It does not require a person to actually receive a sentence of more than one year. *A GCM is the only military court with the ability to impose a sentence in excess of one year.*

(Emphasis added). At minimum, here, the Government failed to follow its own directives when it completed the EOJ for SrA Jackson’s trial. More broadly, though, this interpretation also aligns with what the other services do.

The Army Court of Criminal Appeals (ACCA) and the Navy-Marine Corps Court of Criminal Appeals agree that the jurisdictional limitations of a special court-martial prevent the application of 18 U.S.C. § 922(g)(1).⁴ *United States v. Macias*, No. 202200005, 2022 CCA LEXIS

² See *Lepore*, 81 M.J. at 763 (“[W]e do not reach the merits of the alleged error . . .”).

³ This is the version in effect at the time of SrA Jackson’s hearing. The new version, published 9 April 2024, is substantively identical when it comes to the Air Force’s interpretation of 18 U.S.C. § 922(g)(1). DAFI 51-201, ¶ 29.30.1.1. (9 April 2024).

⁴ This is distinct from 18 U.S.C. § 922(g)(9) covering *misdemeanor domestic violence* convictions. A firearm ban would be in place for a conviction at a special court-martial for a crime of domestic violence, regardless of the fact the crime itself is not punishable by imprisonment for a term exceeding one year. *E.g.*, *United States v. Robertson*, No. 202000281, 2021 CCA LEXIS 531, at *2 (N.M. Ct. Crim. App. Oct. 18, 2021) (unpub. op.) (changing firearm ban to “Yes” because even

580, at *2 (N.M. Ct. Crim. App. Oct. 13, 2022) (unpub. op.) (“Under the statute, convictions adjudicated by a special court-martial do not count as offenses punishable by imprisonment for a term exceeding one year because of the jurisdictional limitations attached to that forum.”); *see United States v. Moreldelossantos*, ARMY 20210167, 2022 CCA LEXIS 164, at *1 (A. Ct. Crim. App. Mar. 17, 2022) (unpub. op.) (changing firearm ban on STR to “No”)⁵; *United States v. Shaffer*, ARMY 20200551, 2021 CCA LEXIS 682, at *1 n.2 (A. Ct. Crim. App. Dec. 15, 2021) (unpub. op.) (changing firearm ban on STR to “No”).⁶ The Army has also codified this position in its service regulation. Army Regulation 27-10, *Legal Services, Military Justice*, ¶ 31–2 (20 Mar. 2024) (“A ‘felony conviction’ is a conviction at a GCM . . .”). Altogether, it was error for the EOJ to bar SrA Jackson’s constitutional right to bear arms.

2. This Court may order correction of the EOJ.

In *United States v. Lepore*, citing to the 2016 R.C.M., this Court held, “the 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

though adjudicated at a special court-martial, conviction was for domestic violence). *See also United States v. Williams*, No. 24-0015/AR, 2024 CAAF LEXIS 43 (C.A.A.F. 2024) (granting review of ACCA decision to change firearm prohibition in special court-martial “domestic violence case”).

⁵ This short form affirmance does not provide the facts of the case, which may be found instead in the filings. *See* Brief on Behalf of Appellant at 1, 4, *United States v. Morel De Los Santos*, 2022 CCA LEXIS 164 (A. Ct. Crim. App. Mar. 17, 2022) (No. ARMY 20210167) (requesting firearm ban be changed and showing convicted at special court-martial for drug offense).

⁶ This short form affirmance also does not provide the facts of the case, which may be found instead in the filings. *See* Brief on Behalf of Appellee at 1 n.1, *United States v. Shaffer*, 2021 CCA LEXIS 682 (A. Ct. Crim. App. Dec. 15, 2021) (No. ARMY 20200551) (opposing firearm ban change and showing convicted at special court-martial for larceny of military property over \$1000).

not act because the “correction relates to a collateral matter and is beyond the scope of our authority under Article 66.” *Id.* at 760.

Six months after this Court’s decision in *Lepore*, the CAAF decided *United States v. Lemire*. The CAAF granted Sergeant Lemire’s petition, affirmed the Army Court of Criminal Appeals (ACCA) 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) (unpublished). This disposition stands in tension with *Lepore*.

The CAAF’s decision in *Lemire* reveals three things. First, the CAAF has the power to correct administrative errors in promulgating orders.⁷ Second, the CAAF believes that Courts of Criminal Appeals (CCAs) have the power to address collateral consequences under Article 66 as well since it “directed” the ACCA to fix—or have fixed—the erroneous requirement that Sergeant Lemire register as a sex offender. Third, if the CAAF and the CCA’s have the power to fix administrative errors under Article 66 as they relate to collateral consequences, then they also have the power to address constitutional errors in promulgating orders, even if the Court deems them to be a collateral consequence.

Moreover, *Lepore* relates to a prior version of the Rules for Courts-Martial—“[a]ll references in this opinion to the UCMJ and [R.C.M.] are to the *Manual for Courts-Martial, United States* (2016 ed.)” 81 M.J. at n.1. In the 2019 *MCM*, both the STR and the EOJ contain “[a]ny additional information . . . required under regulations prescribed by the Secretary concerned.” R.C.M. 1101(a)(6), 1111(b)(3)(F). Under DAFI 51-201, *Administration of Military Justice*, dated

⁷ While a promulgating order was at issue in *Lemire*, the same should apply to the EOJ, which replaced the promulgating order as the “document that reflects the outcome of the court-martial.” *MCM*, App. 15 at A15-22.

14 April 2022, ¶ 29.32, the STR and EOJ must include whether the offenses trigger a prohibition under § 922. 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.⁸ Thus, this Court can rule in Appellant’s favor without taking the case en banc. If this Court disagrees, Appellant offers the above argument to overrule *Lepore* under Joint Rule of Appellate Procedure 27(d).

WHEREFORE, Appellant respectfully requests this Honorable Court hold §992(g)’s firearm prohibition is unconstitutional as applied to him and order correction of the STR and EOJ to indicate that no firearm prohibition applies in his case.

Respectfully submitted,

JARETT MERK, Lt Col, USAFR
1500 Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762

⁸ See also *United States v. Robertson*, No. 202000281, 2021 CCA LEXIS 531 (N.M. Ct. Crim. App. 18 Oct. 2021) (unpub. op.) (ordering correction of an STR because it incorrectly stated § 922 did not apply); *United States v. Moreldelossantos*, ARMY 20210167, 2022 CCA LEXIS 164 (17 Mar. 2022) (unpub. op.) (ordering correction of the STR to change the Section 922(g)(1) designator to “No”).

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 June 2024.

Respectfully submitted,

JAKE L I MEKK, Lt Col, USAFR
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Joint Base Andrews NAF, MD 20762

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	
<i>Appellee,</i>	)	ANSWER TO ASSIGNMENT
	)	OF ERROR
v.)	
	)	Special Panel
Senior Airman (E-4))	
NYSHA D.G. JACKSON, USAF,	)	ACM S32757
<i>Appellant.</i>)	

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

ISSUE PRESENTED

**WHETHER THE MISAPPLICATION OF 18 U.S.C. § 922 TO
APPELLANT UNCONSTITUTIONALLY DEPRIVED HER
OF HER RIGHT TO BEAR ARMS BASED ON HER
NONVIOLENT CONVICTION AT A SPECIAL COURT-
MARTIAL.**

STATEMENT OF THE CASE

The United States generally accepts Appellant’s Statement of the Case.

STATEMENT OF FACTS

facts necessary to the disposition of this case are discussed in the specific issues below.

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.**

Law and Analysis

This Court has repeatedly rejected the same claim Appellant raises now. In United States v. Lepore, 81 M.J. 759, 763 (A.F. Ct. Crim. App. 2021), this Court held that it “lacks authority under Article 66, UCMJ, to direct correction of the 18 U.S.C. § 922(g) firearms prohibition” in a

court-martial order. Yet, Appellant argues here that because our superior Court in United States v. Lemire, 82 M.J. 263, n.* (C.A.A.F. 9 March 2022) (decision without published opinion), ordered the Army to correct a promulgating order that annotated an appellant as a sex offender, this Court now has the authority to modify his Statement of Trial Results and Entry of Judgment. (App. Appendix at 8-9).

In doing so, Appellant repeats similar arguments this Court rejected in multiple cases. In United States v. Fernandez, ACM 40290 (f rev), 2024 CCA LEXIS 7 (A.F. Ct. Crim. App. 9 January 2024), this Court again denied the claim, finding that no aspect of that appellant's case "cause us to revisit or overrule the decision in Lepore." Then, in a newly published case, United States v. Vanzant, ___ M.J. ___, ACM 22004, 2024 CCA LEXIS 215 (A.F. Ct. Crim. App. 28 May 2024), this Court denied Appellant's claim, stating, "For the reasons stated in Fernandez, we are not persuaded the CAAF's decision in Lemire gives us cause to revisit or overrule Lepore."

Here, Appellant reiterates the same argument from these cases that an asterisk footnote in a summary decision provides this Court jurisdiction to review his claim. However, as this Court has repeatedly stated over the last six months, it does not. Consistent with those decisions, this Court should continue to follow Lepore and find that it lacks jurisdiction under Article 66, UCMJ, to order the correction of the Statement of Trial Results or Entry of Judgment on the grounds requested by Appellant.¹ Accordingly, Appellant's claim must fail.

¹ Air Force Manual 71-102, Chapter 9, provides an administrative mechanism for individuals seeking to correct information entered into the National Instant Criminal Background Check System (NICS), which is a database system for the indexing of persons with a qualifying prohibition for the shipment, transportation, receipt and possession of firearms and ammunition in or affecting interstate or foreign commerce. The process detailed in this chapter is the proper venue to address Appellant's claim.

CONCLUSION

WHEREFORE, this Court should deny Appellant's claims and affirm the findings and sentence.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, appellate counsel, and the Air Force Appellate Defense Division on 26 July 2024 via electronic filing.

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