

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
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	4 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)(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 **11 October 2023**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

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 4 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
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, 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 4 August 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SECOND)
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	4 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 (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 **10 November 2023**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 113 days have elapsed. On the date requested, 150 days will have elapsed.


On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate 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 4 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
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, 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 5 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 (THIRD)
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	3 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 (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 **10 December 2023**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate 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 3 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' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 November 2023.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (FOURTH)
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	1 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 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 **9 January 2024**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 171 days have elapsed. On the date requested, 210 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 23 cases; 13 cases are pending initial AOE's before this Court. Counsel has a Supreme Court petition for certiorari and 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. Six 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 started his initial review of the 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 and 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.

4. *United States v. Wood*, No. ACM 40429 – 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, UCMJ. 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. Counsel has not started his review of this case.

5. *United States v. Ellis*, No. ACM 40430 – 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 2022.¹ 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 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 currently confined. Counsel has not yet started his review of this case.

¹ Various charges and specifications were withdrawn and dismissed with prejudice.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. 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, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently 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 Operations Division on 1 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' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, 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 4 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 (FIFTH)
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	3 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 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 **8 February 2024**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 204 days have elapsed. On the date requested, 240 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 23 cases; 13 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. Six 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. Except for sealed materials, Counsel has completed his review of 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 and 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.

4. *United States v. Wood*, No. ACM 40429 – 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, UCMJ. 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. Counsel has not started his review of this case.

5. *United States v. Ellis*, No. ACM 40430 – 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 2022.¹ 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 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 currently confined. Counsel has not yet started his review of this case.

¹ Various charges and specifications were withdrawn and dismissed with prejudice.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. 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, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently 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 Operations Division on 3 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' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, 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 4 January 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	1 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 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 **9 March 2024**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 233 days have elapsed. On the date requested, 270 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate 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 Reply Brief (Answer due to Court and Counsel on 20 February 24) and 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. Six 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 of trial, including sealed materials, and is finalizing the AOE for submission.

2. *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 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 currently confined. Counsel has not yet started his review of 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

¹ On 29 January 2024, this Court (Panel 2) 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.

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.

5. *United States v. Wood*, No. ACM 40429 – 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, UCMJ. 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. Counsel has not started his review of this case.

6. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. 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, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently 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 Operations Division on 1 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' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, 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 1 February 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF
<i>Appellee,</i>	)	TIME (SEVENTH)
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	28 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 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 **8 April 2024**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 260 days have elapsed. On the date requested, 300 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 23 cases; 11 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. Five 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 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. On 26

¹ On 29 January 2024, this Court (Panel 2) 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.

February 2024, Counsel submitted a Motion for Withdrawal of Appellate Review and a Motion to Attach Document which this Court has not yet acted upon.

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 started his review of the 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.


4. *United States v. Wood*, No. ACM 40429 – 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, UCMJ. 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. Counsel has not started his review of this case.

5. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. 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, dated 21 March 2023. The ROT consists of three

volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently 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 Operations Division on 28 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'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly a year-long delay practically ensures this Court will not be able to issue a decision that complies with out superior Court's Appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue 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 yet begun 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 1 March 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	MOTION FOR ENLARGEMENT OF TIME (EIGHTH)
<i>Appellee,</i>)	
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	28 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 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 **8 May 2024**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 289 days have elapsed. On the date requested, 330 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 21 cases; 10 cases are pending initial AOE's before this Court. Counsel has 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. Four 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 all unsealed exhibits, moved this Court to review the sealed exhibits, and has started to review 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.

3. *United States v. Wood*, No. ACM 40429 – 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, UCMJ. 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. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted

Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. 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, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently 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 Operations Division on 28 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.)	
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly a year-long delay practically ensures this Court will not be able to issue a decision that complies with out superior Court's Appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue 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 yet begun 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 29 March 2024.

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

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

UNITED STATES	)	No. ACM 40481
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kris A. HOLLENBACK)	
Major (O-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 28 March 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 29th day of March, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **8 May 2024**.

Appellant’s counsel is advised that given the number of enlargements granted thus far, the court will continue to closely examine any further requests for an enlargement of time.



FOR THE COURT

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

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

UNITED STATES	)	No. ACM 40481
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF
Kris A. HOLLENBACK	)	PANEL CHANGE
Major (O-4))	
U.S. Air Force)	
<i>Appellant</i>)	

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:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
ANNEXSTAD, WILLIAM J., Colonel, Senior Appellate Military Judge
MASON, BRIAN C., Lieutenant 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 (NINTH)
)	
v.	)	Before Panel No. 1
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	29 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 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 **7 June 2024**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 321 days have elapsed. On the date requested, 360 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently 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 currently due on 5 May 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. Four 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 record and has completed approximately half of the AOE. Counsel will not be requesting another enlargement of time and will file this AOE on 12 May 2024.

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 and is has finished approximately one-third of the AOE. Barring unforeseen circumstances, Counsel will not be requesting another enlargement of time in this case and will file this case on or before 26 May 2024.

3. *United States v. Wood*, No. ACM 40429 – 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, UCMJ. 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. Counsel has not started his review of this case.

4. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. 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, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently 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 Operations Division on 29 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.)	
	)	Before Panel No. 1
Major (O-4))	
KRIS A. HOLLENBACK	)	No. ACM 40481
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 opposition to Appellant's Motion for Enlargement of Time (Ninth).

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 yet begun review of the record of trial at this late stage of the appellate process.

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

J. PETER 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. PETER 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.	)	Special Panel
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
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:**

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 **7 July 2024**. The record of trial was docketed with this Court on 13 June 2023. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 390 days will have elapsed.

On 31 January 2023, consistent with his pleas, a Military Judge sitting at a general court-martial at Minot, Air Force Base, North Dakota, convicted Appellant of one charge, two specifications of possessing and viewing child pornography, in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934. R. at 105. The Military Judge sentenced Appellant to be confined for three years and to be dismissed from the Air Force. R. at 134. The Convening Authority took no action on the findings, took no action on the sentence, and approved Appellant’s request for a waiver of all automatic forfeitures. ROT, Vol. 1, Convening Authority Decision on Action, dated 16 March 2023.

The ROT consists of two volumes, three prosecution exhibits, three defense exhibits, and nine appellate exhibits. Appellant is currently confined.

Appellate counsel is currently assigned 20 cases; seven cases are pending initial AOE's before this Court. Counsel has one pending CAAF Supplement currently due on 29 May 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. That is, Counsel's caseload has prevented him from reaching Appellant's case sooner. Appellant is aware of his right to speedy appellate review, extensions of time, and consents to this extension of time. Given the pleas and subject matter of this case, Counsel is optimistic, barring unforeseen matters, that this will be his last request for an extension of time.

Since his last extension of time, Counsel has:

1. Drafted and filed an eight-issue, 50-page AOE in *United States v. Serjak*, No. ACM 40392
2. Reviewed, drafted, and filed a four-issue, 16-page AOE in *United States v. Van Velson*, No. ACM 40401
3. Reviewed, drafted, and filed a Merits Brief with one *Grostefon* issue in *United States v. Wood*, No. ACM 40429
4. Drafted a two-issue, 30-page CAAF Supplement in *United States v. Aguirre*, No. 24-0146/AF, 2024 CAAF LEXIS 263 (C.A.A.F. May 9, 2024) for submission on 29 May 2024
5. Prepared for and participated in one moot as a judge


One Air Force Court case has priority over the present case:

1. *United States v. Block*, No. ACM 40466 – On 28 February 2023, consistent with his pleas, a Military Judge sitting at a general court-martial, at Hill Air Force Base, Utah, convicted Appellant of one charge, one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one charge, two specifications of possessing and viewing child

pornography, in violation of Article 134, UCMJ, 10 U.S.C. 934. R. at 67. The Military Judge sentenced Appellant to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. 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, dated 21 March 2023. The ROT consists of three volumes, three prosecution exhibits, 19 defense exhibits, and nine appellate exhibits. The Appellant is currently confined. Counsel has reviewed the entire record except for the sealed materials. On 23 May 2024, Counsel moved this Court to review the sealed materials. This Court has not yet ruled on that motion. Barring unforeseen circumstances, Counsel intends to file this AOE on or before the current deadline of 15 June 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 Operations Division on 28 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' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.)	
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, USAF,)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's nearly a year-long delay practically ensures this Court will not be able to issue a decision that complies with out superior Court's Appellate processing standards. Appellant has already consumed almost two-thirds of the 18-month standard for this Court to issue decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities.

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 29 May 2024.

BRITTANY M. SPEIRS, Maj, 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 40481
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kris A. HOLLENBACK,)	
Major (O-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 28 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Tenth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, prior filings by the parties and orders of the court, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 31st day of May, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Tenth) is **GRANTED**. Appellant shall file any assignments of error not later than **7 July 2024**.

Given the number of enlargements of time granted thus far, further requests by Appellant for enlargements of time will only be granted due to exceptional circumstances.



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 TO EXAMINE SEALED
<i>Appellee,</i>	)	MATERIAL
)	
v.	)	Special Panel
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	30 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: Prosecution Exhibit 1, Stipulation of Fact, Attachment 2. The Military Judge ordered that the attachment be sealed. App. Ex. VIII. Trial Counsel, Defense Counsel, and the Military Judge presented or reviewed these materials at trial. R. at 26-27, 31.

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.

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 30 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 MATERIAL
)	
Major (O-4)	)	ACM 40481
KRIS A. HOLLENBACK, 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 Material. The United States does not object to Appellant's counsel reviewing the named exhibit, 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 material.

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 31 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 40481
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Kris A. HOLLENBACK)	
Major (O-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Special Panel

On 30 May 2024, Appellant’s counsel moved this court to examine sealed materials, specifically, Attachment 2 of Prosecution Exhibit 1 which was reviewed by trial and defense counsel at Appellant’s court-martial. On 31 May 2024, the United States responded that it does not object to Appellant’s motion as long as it can also review the sealed portions of the record as necessary to answer to any assignments of error by Appellant that reference the sealed materials.

Appellate defense counsel argues it is necessary to review the entire record, including the sealed materials, to ensure undersigned counsel provides “competent appellate representation.”

Materials presented or reviewed at trial and sealed may be examined by appellate counsel upon “a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

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

Accordingly, it is by the court on this 3d day of June, 2024,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Attachment 2 of Prosecution Exhibit 1**, subject to the following conditions:

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

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



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,	)	MERITS BRIEF
<i>Appellee,</i>)	
)	
v.	)	Special Panel
)	
Major (O-4),	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force,	)	10 June 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 Major Kris A. Hollenback, 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,

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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Division on 10 June 2024.

Respectfully submitted,

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

APPENDIX A

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

I.

AS APPLIED TO MAJOR HOLLENBACK, 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 MAJOR HOLLENBACK WAS NOT CONVICTED OF A VIOLENT OFFENSE.²

Additional Facts

After his conviction, the Government determined that Major Hollenback’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 Major Hollenback fell under the firearm prohibition. Thus, Major Hollenback is unable to argue which specific subsection of § 922 is unconstitutional in his case, although he knows it could not

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

² Major Hollenback recognizes this Court’s published opinion in *United States v. Vanzant*, No. ACM 22004, slip op. (A.F. Ct. Crim. App. 28 May 2024), but raises this issue anyway as the Court of Appeals for the Armed Forces has granted review on this issue (as *Vanzant* recognized).

be the domestic violence provision given the facts of his case. Regardless, it appears that the Government cannot meet its burden of proving a historical analog that barred offenders like Major Hollenback 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 Major Hollenback’s conviction when he was not convicted of a violent offense.

An additional argument bolsters Major Hollenback’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, Major Hollenback 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, <i>Appellee,</i>	)	UNITED STATES ANSWER TO MERITS BRIEF
)	
v.	)	Before Special Panel
)	
Major (O-4)	)	No. ACM 40481
KRIS A. HOLLENBACK,)	
United States Air Force	)	10 July 2024
<i>Appellant.</i>)	

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

ISSUE PRESENTED

**AS APPLIED TO MAJOR HOLLENBACK, 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
MASTER SERGEANT BLOCK WAS NOT CONVICTED OF
A VIOLENT OFFENSE.²**

STATEMENT OF CASE

On 31 January 2023, a military judge sitting as the general court-martial convicted Appellant—consistent with his pleas—of one charge consisting of two specifications for possessing and viewing child pornography, in violation of Article 134, UCMJ. (R. at 105; *Entry of Judgment*, 31 January 2023, ROT, Vol. 1.) The military judge sentenced Appellant to 3 years of confinement and dismissal from the service. (*Entry of Judgment*, 31 January 2023, ROT, Vol. 1.) After considering Appellant’s post-trial submissions, the convening authority waived the

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

² Appellant personally raises this issue pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A.)

automatic forfeitures for a period of six months and approved the remainder of Appellant's sentence as adjudged. (*Convening Authority Action*, ROT, Vol. 1.)

STATEMENT OF FACTS

Sometime before April 2021, Appellant downloaded the Tumblr, MEGA, and Kik applications to his Samsung Galaxy S20 phone. (R. at 37; Pros. Ex. 1 at ¶ 10.) Appellant used the applications to join chat groups, where he exchanged messages with other users and requested pornographic images of individuals under age 18. (R. at 37.) In response, various users sent Appellant links to images of children receiving or performing oral sex, children being anally or vaginally penetrated, and children with their genitals lasciviously displayed. (R. at 37, 42.) Appellant was aware the images depicted minors, based on factors such as incomplete breast development, lack of pubic hair, small stature, and juvenile facial structure. (Pros. Ex. 1 at ¶ 10.) Because the images were high-definition, Appellant concluded that the images and videos were of actual minors, as opposed to being computer-generated. (R. at 42.) Despite knowing that the images contained child pornography and that possessing them was illegal, Appellant downloaded 44 such images as individual files or zipped folders to the MEGA and password-protected Secure Folders applications on his phone. (R. at 42; Pros. Ex. 1 at ¶¶ 10-11.)

In addition to downloading images sent by other users, Appellant used Tumblr to view at least 59 images of child pornography, consisting of both real and computer-generated images of children engaging in sexual acts or posed so their genitals were the "focal point" of the image. (R. at 50-51; Pros. Ex. 1 at ¶ 13.) The computer-generated images depicted "what appeared to be very young girls" engaged in various sexual acts with adults. (R. at 54, 58.) The real images depicted actual prepubescent girls with "undeveloped breasts, little to no pubic hair, juvenile faces, small stature, and other characteristics [Appellant] associated with children and young teenagers." (R.

at 55.) When Appellant came across such images on Tumblr, he would stop scrolling to view the image. (R. at 62.) Appellant understood the images to be child pornography and knew his viewing was wrongful. (R. at 74.)

ARGUMENT

I.

THE 18 U.S.C. § 922 FIREARMS PROHIBITION—WHICH IS CONSTITUTIONAL AS APPLIED TO APPELLANT—IS NEVERTHELESS A COLLATERAL MATTER BEYOND THE SCOPE OF THIS COURT’S JURISDICTION.

Additional Facts

For the crimes to which Appellant pleaded guilty, he faced, *inter alia*, a maximum of 20 years in confinement and a dismissal from the service. (R. at 77.) The military judge sentenced Appellant to confinement for 3 years and a dismissal. (*Entry of Judgement*, 31 January 2023 ROT, Vol. 1.) The first indorsement to the Entry of Judgement included the following annotation: “Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes.” (Id.)

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

Law & Analysis

The Gun Control Act of 1968 makes it unlawful for a person to possess a firearm if he has been, *inter alia*, “convicted in any court of a crime punishable by imprisonment for a term exceeding one year” or “discharged from the Armed Forces under dishonorable conditions.” 18 U.S.C. § 922(g)(1), (g)(6). Appellant, having been convicted and sentenced to over a year in confinement, unquestionably falls into the former category. Having been adjudged a dismissal, he will fall into the latter category as well. See United States v. Bell, 24 C.M.R. 3, 5 (C.M.A. 1957)

(noting that both “dismissal” and “dishonorable discharge” embody “the same idea, namely, separation from the service with dishonor.”) Given that a plain reading of the statute is all it takes to reach this conclusion, this Court should not entertain any notion that Appellant does not know which subsection of 18 U.S.C. § 922 applies to him. (App. Br., Appx. A at 1.) After all, Appellant “knows it would not be domestic violence, given the facts of his case.” (Id. at 2.)

Today, Appellant seeks to capitalize on the fact that he was not convicted of a “violent offense.” (Id. at 3.) Appellant now asks this Court to find the firearms prohibition unconstitutional as applied to him and order correction of post-trial paperwork, citing the Government’s alleged inability to “meet its burden of proving a historical analog[ue] that barred offenders like [him] from possessing firearms.” (Id. at 2.)

But as discussed below, Appellant is not entitled to relief—first and foremost, because irrespective of whether the statute is constitutional, this Court lacks jurisdiction to grant any relief; and second, even if this Court could grant relief, none would be warranted because this nation has long barred the possession of firearms by persons who are not law-abiding, responsible citizens.

A. Irrespective of its constitutionality, the firearms prohibition is a collateral matter outside the scope of this Court’s authority under Article 66, UCMJ.

“The courts of criminal appeals are courts of limited jurisdiction, defined entirely by statute.” United States v. Arness, 74 M.J. 441, 442 (C.A.A.F. 2015). Article 66(d), UCMJ, provides that this Court “may only act with respect to the findings and sentence as entered into the record under section 860c of this title.” 10 U.S.C. § 866(d). It does not authorize this Court to act on the collateral consequences of a conviction, such as the firearms prohibition. This Court has said as much before. In United States v. Lepore, this Court held that the firearms prohibition was a collateral matter outside the scope of this Court’s authority under Article 66, UCMJ, and that the Court therefore lacked authority to “direct correction of the 18 U.S.C. § 922 firearms prohibition”

on a court-martial order. 81 M.J. at 760-63. In so holding, this Court reasoned that the firearms prohibition “relates to a reporting mechanism external to the UCMJ and Manual for Courts-Martial,” and “was not a finding or part of the sentence, nor was it subject to approval by the convening authority.” *Id.* at 763. “[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 [this Court’s] limited authority under Article 66, UCMJ.” *Id.* This Court recently re-affirmed this position in United States v. Vanzant, where it reiterated that the firearms prohibition was a collateral consequence that was beyond its statutory authority to review. __ M.J. __, No. ACM 22004, 2024 CCA LEXIS 215, at *24 (A.F. Ct. Crim. App. May 28, 2024).

Appellant, for his part, contends that this Court’s jurisprudence is “at odds” with our superior court’s decision in United States v. Lemire, in which the Court of Appeals for the Armed Forces ordered the Army to delete an annotation regarding sex offender registration from a promulgating order. 82 M.J. 263 n.* (C.A.A.F. 2022) (decision without published opinion). Relying entirely on a 20-word footnote³ in a summary decision without a published opinion, Appellant insists that the Lemire decision stands for the proposition that CAAF can order correction of administrative errors in post-trial paperwork; that CAAF believes the CCA can address collateral consequences; and that CAAF and the CCAs have the power to address “constitutional errors...even if the Court deems them to be a collateral consequence.” (App. Br. Appx. A at 4.) As in Vanzant, this Court should be “[un]persuaded the CAAF’s decision in Lemire gives us cause to revisit or overrule Lepore.” 2024 CCA LEXIS 215, at *25. Although Lemire is

³ “It is directed that the promulgating order be corrected to delete the requirement that Appellant register as a sex offender.” Lemire, 82 M.J. at 263 n.*.

technically a published decision, it is devoid of substance—it did not call attention to a rule of law or procedure, nor did it analyze why the ordered correction was viable and appropriate in that case. Accordingly, it is not the kind of decision that can be treated as precedent, and this Court should continue to decline to do so. *See* Rule 30.4(a), Air Force Court of Criminal Appeals, Rules of Practice and Procedure.⁴

Citing the 2019 versions of R.C.M. 1101(a)(6) and R.C.M. 1111(b)(3)(F)—which provide for the inclusion of “[a]ny additional information . . . required under the regulations prescribed by the Secretary concerned” in the statement of trial results and entry of judgment, respectively—Appellant also avers that the rules now require the firearms prohibition annotation “by incorporation.” (App. Br. Appx. at 5.) But what Appellant fails to realize is that annotation by incorporation has *always* been the posture—both under the 2016 rules that governed in Lepore and the 2019 rules that governed Appellant’s case. And as this Court held in Vanzant, “[t]he firearms prohibition remains a collateral consequence of the conviction, rather than an element of the findings or sentence.” 2024 CCA LEXIS 215, at *24-25. Because this issue is outside the scope of this Court’s authority, Appellant is not entitled to relief and the analysis should end here.

⁴ “Published opinions are those that call attention to a rule of law or procedure that appears to be overlooked or misinterpreted or those that make a significant contribution to military justice jurisprudence. Published opinions serve as precedent, providing the rationale of the Court’s decision to the public, the parties, military practitioners, and judicial authorities.” Rule 30.4(a), Air Force Court of Criminal Appeals, Rules of Practice and Procedure.

B. The firearms prohibition is constitutional as applied to Appellant because this nation has a historical tradition of disarming the dangerous.⁵

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST., amend. II. But as the Supreme Court has repeatedly emphasized, “the right secured by the Second Amendment is not unlimited.” District of Columbia v. Heller, 554 U.S. 570, 626 (2008); see N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 20 (2022); McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion). “[T]he right was *never* thought to sweep indiscriminately.” United States v. Rahimi, No. 22-915, 2024 U.S. LEXIS 2714 (June 21, 2024).

While the Amendment guarantees “the right of *law-abiding, responsible citizens* to use arms for self-defense,” Bruen, 597 U.S. at 26 (emphasis added), the same cannot be said for those who have broken the law. The history of firearms regulation reflects “a concern with keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons,” Barrett v. United States, 423 U.S. 212, 220 (1976), and “an intent to impose a firearms disability on *any* felon based on the fact of conviction.” Lewis v. United States, 445 U.S. 55, 62 (1980) (emphasis added).

For Appellant, therein lies the rub. As someone whose right to possess firearms was restricted as a consequence of his conviction, Appellant is in a fundamentally different position than the law-abiding, non-criminal petitioners in Bruen, Heller, and McDonald.⁶ For Appellant—

⁵ Although analysis of this assignment of error should start and end with the scope of this Court’s jurisdiction, the United States addresses, *arguendo*, Appellant’s claim that 18 U.S.C. § 922 is unconstitutional as applied to him.

⁶ See Bruen, 597 U.S. at 8 (where “law-abiding New York residents” challenged a state restriction on carrying a firearm outside the home); Heller, 554 U.S. at 573 (where a policeman challenged the District of Columbia’s ban on handgun possession in the home); McDonald, 561 U.S. at 790 (challenging a city ordinance that effectively banned “law-abiding members of the community” from having handguns in the home).

now a felon—falls into a class of non-law-abiding, “irresponsible persons.” Barrett, 423 U.S. at 220. And despite his suggestions to the contrary, the fact that Appellant’s crime did not involve *physical* violence does not absolve him of his sins.

After all, this nation has a historical tradition of disarming not only violent offenders, but also “dangerous persons.” In the early days of the republic, the law was frequently used to disarm groups that were considered dangerous, such as British loyalists. *See* Joseph Blocher & Caitlan Carberry, *Historical Gun Laws Targeting “Dangerous” Groups and Outsiders*, DUKE LAW SCHOOL PUBLIC & LEGAL THEORY SERIES NO. 2020-80 (2020). This tradition of disarming the dangerous endures today—in part, through the “longstanding prohibitions on the possession of firearms by felons,” which the Supreme Court has identified as “presumptively lawful regulatory measures.” Heller, 554 U.S. at 626, 627 n.26.

In the modern age, dangerousness cannot be defined by physical violence alone. Thus, it matters little that Appellant’s crime did not involve physical violence. As the world has evolved, crime has evolved with it. There are more laws to violate than there were in the Founding Era, more ways to violate them, and more ways to be dangerous as a result. This is why “the Second Amendment permits more than just those regulations identical to ones that could be found in 1791,” because “[h]olding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers.” Rahimi, 2024 U.S. LEXIS 2714, at *16.

Appellant’s own crime is a prime example of why dangerousness cannot be defined by physical violence alone. The proliferation of child pornography via new media technology is “a relatively recent, albeit pernicious, development.” United States v. Leonard, 64 M.J. 381, 383 (C.A.A.F. 2007). It is a “tragedy” that is “sustain[ed] and aggravate[ed]” by “everyone who reproduces, distributes, [and] possesses the images of the victim’s abuse.” Paroline v. United

States, 572 U.S. 434, 436 (2014). Thus, those convicted of such offenses are required to register as sex offenders—even if they did not personally abuse the child. *See* 34 U.S.C. § 20911.

Such sex offenders “are a serious threat in this Nation.” McKune v. Lile, 536 U.S. 24, 32 (2002). Their risk of recidivism is “frightening and high,” Smith, 538 U.S. at 103 (citation omitted), and when they reenter society, “they are much more likely than any other type of offender to be rearrested for a new [sex offense].” McKune, 536 U.S. at 33. For offenders like Appellant, recidivism translates into a continued interest in child pornography and sexual abuse of children. This interest in child pornography creates the demand for it, which “harms children in part because it drives production, which involves child abuse.” Paroline, 572 U.S. at 439-40. The materials produced are “a permanent record of the depicted child’s abuse, and the harm to the child is exacerbated by [its] circulation.” Id. at 440 (alteration in original) (internal quotation marks and citation omitted). Consequently, Appellant poses a real threat to our most vulnerable demographic—the children. *See* McKune, 536 U.S. at 32 (“[T]he victims of sexual assault are most often juveniles.”).

Appellant may not be a physically violent offender, but he is a danger to our society nonetheless. *See* New York v. Ferber, 458 U.S. 747, 758 n.9 (1982) (“[The] use of children as ... subjects of pornographic materials is very harmful to both the children and the society as a whole.”). Given this nation’s historical tradition of disarming dangerous persons, 18 U.S.C. § 922 is constitutional as applied to Appellant, and he is not entitled to relief.⁷

Ultimately, the constitutional question posed here is unrelated to the actual findings and sentence in the case, and therefore outside the scope of this Court’s authority. Thus, as discussed

⁷ Appellant’s citations to various federal circuit court cases are irrelevant, given that they deal with other subsections of 18 U.S.C. § 922 that are not at issue in this case.

above, Appellant is not only unentitled to relief, but also powerless to obtain any from this Court at all.

WHEREFORE, the United States respectfully requests that this Honorable Court affirm the findings and sentence.

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.

KATE E. LEE, Capt, USAF
Appellate Government Counsel
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MARY ELLEN PAYNE
Associate Chief
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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 10 July 2024.

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Appellate Government Counsel
Government Trial and Appellate Operations Division
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United States Air Force

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

UNITED STATES	)	No. ACM 40481
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF
Kris A. HOLLENBACK	)	PANEL CHANGE
Major (O-4))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this 17th day of July, 2024,

ORDERED:

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

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

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
ANNEXSTAD, WILLIAM J., Colonel, Senior Appellate Military Judge
GRUEN, PATRICIA A., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal