

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

<b>UNITED STATES,</b>	)	<b>NOTICE OF DIRECT APPEAL</b>
<i>Appellee,</i>	)	<b>PURSUANT TO ARTICLE</b>
v.	)	<b>66(b)(1)(A), UCMJ</b>
	)	
	)	
Airman First Class (E-3)	)	No. ACM _____
<b>JAMES D. BAYS,</b>	)	
United States Air Force,	)	7 July 2024
<i>Appellant.</i>	)	

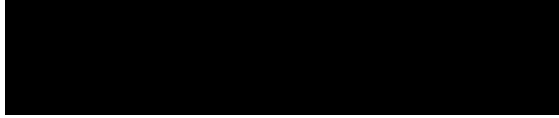
**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES  
AIR FORCE COURT OF CRIMINAL APPEALS:**

At Osan Air Base, Republic of Korea, a military judge at a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), convicted Airman First Class (A1C) James D. Bays, Appellant, consistent with his pleas, of one specification of failure to go to his place of duty, two specifications of dereliction of duty, and two specifications of drunk on duty, in violation of Articles 86, 92, and 112, UCMJ. Entry of Judgment, 12 December 2023. The military judge sentenced A1C Bays to confinement for a total of 45 days, reduction in pay grade to E-1, forfeiture of \$500 pay per month for 90 days, and a reprimand. Statement of Trial Results, 17 November 2023. The convening authority took no action on the findings or sentence in the case. Convening Authority Decision on Action, 4 December 2023.

A1C Bays has not submitted any materials to The Judge Advocate General in accordance with Article 69, UCMJ. On 8 April 2024, the Government prepared a notice memorandum to inform A1C Bays of his right to file a direct appeal.

Pursuant to Article 66(b)(1)(A), UCMJ, A1C Bays respectfully files his notice of direct appeal.

Respectfully submitted,

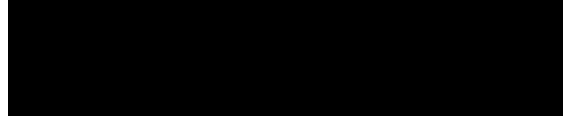


SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4777  
Email: samantha.golseth@us.af.mil

### **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 7 July 2024.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4777  
Email: samantha.golseth@us.af.mil

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

UNITED STATES	)	No. ACM _____
<i>Appellee</i>	)	
	)	
v.	)	
	)	
James D. BAYS	)	NOTICE OF
Airman First Class (E-3)	)	DOCKETING
U.S. Air Force	)	
<i>Appellant</i>	)	

On 7 July 2024, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A).

As of the date of this notice, the court has not yet received a record of trial in Appellant's case.

Accordingly, it is by the court on this 8th day of July, 2024,

**ORDERED:**

The case in the above-styled matter is referred to Panel 3.

**It is further ordered:**

The Government will forward a copy of the record of trial to the court forthwith.



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Commissioner

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

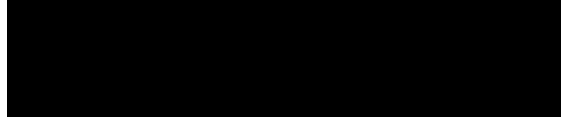
<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(FIRST)</b>
v.	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force,	)	
<i>Appellant.</i>	)	25 September 2024

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Airman First Class (A1C) James D. Bays, Appellant, hereby moves for an enlargement of time to file his assignments of error. A1C Bays requests an enlargement for a period of 60 days, which will end on **10 December 2024**. A1C Bays’ case was docketed with this Court on 8 July 2024, but this Court had not yet received the record of trial in his case. Notice of Docketing. On 12 August 2024, this Court received his record of trial, beginning the time-period for A1C Bays to file his assignments of error. From the date of docketing to the present date, 79 days have elapsed. On the date requested, 155 days will have elapsed.

**WHEREFORE**, A1C Bays respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

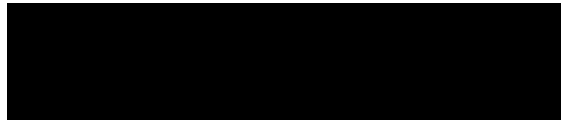
A solid black rectangular box used to redact the signature of Samantha P. Golseth.

SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: [samantha.golseth@us.af.mil](mailto:samantha.golseth@us.af.mil)

**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 25 September 2024.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF  
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Air Force Appellate Defense Division  
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Joint Base Andrews NAF, MD 20762-6604  
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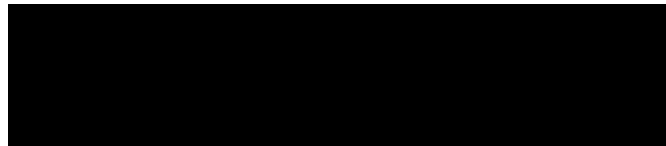
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman First Class (E-3)	)	ACM 24043
JAMES D. BAYS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3

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

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

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

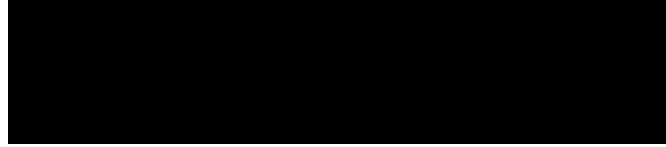


JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800



**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 September 2024.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

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

UNITED STATES	)	No. ACM 24043
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
James D. BAYS	)	
Airman First Class (E-3)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 27 November 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Second) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

Appellant's case was docketed with the court on 8 July 2024. Thereafter, the record of trial was filed with this court and counsel for both parties on 12 August 2024.

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 6th day of December, 2024,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Second) is **GRANTED**. Appellant shall file any assignments of error not later than **9 January 2025**.

Appellant's counsel is advised that any subsequent requests for enlargement of time will be considered individually on their merits.

In this vein, any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, ordinarily will not be granted absent *exceptional circumstances*.<sup>\*</sup>



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

---

<sup>\*</sup> While filings should be computed from date of docketing, *see* A.F. CT. CRIM. APP. R. 23.3(m)(4), this court is amendable to considering delays incurred in the actual receipt of the record of trial as potential “good cause shown” to justify an enlargement of time.

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(SECOND)</b>
v.	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force,	)	
<i>Appellant.</i>	)	27 November 2024

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Airman First Class (A1C) James D. Bays, Appellant, hereby moves for a second enlargement of time to file his assignments of error. A1C Bays requests an enlargement for a period of 30 days, which will end on **9 January 2025**. A1C Bays’ case was docketed with this Court on 8 July 2024, but this Court had not yet received the record of trial in his case. Notice of Docketing. On 12 August 2024, this Court received his record of trial, beginning the time-period for A1C Bays to file his assignments of error. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 185 days will have elapsed.

At Osan Air Base, Republic of Korea, a military judge at a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), convicted Airman First Class (A1C) James D. Bays, Appellant, consistent with his pleas, of one specification of failure to go to his place of duty, two specifications of dereliction of duty, and two specifications of drunk on duty, in violation of Articles 86, 92, and 112, UCMJ. Entry of Judgment, 12 December 2023. The military judge sentenced A1C Bays to confinement for a total of 45 days, reduction in pay grade to E-1, forfeiture of \$500 pay per month for 90 days, and a reprimand. Statement of Trial Results, 17 November 2023. The convening authority took no

action on the findings or sentence in the case. Convening Authority Decision on Action, 4 December 2023. The record of trial includes 3 prosecution exhibits, 4 defense exhibits, 4 appellate exhibits, and 154 transcript pages

Undersigned counsel currently represents 25 clients and is presently assigned 12 cases pending initial brief before this Court, to include A1C Bays' brief. Through no fault of A1C Bays, undersigned counsel has been working on other assigned matters and has yet to complete his assignment of error brief. Based on the date of docketing, there are currently twelve cases that have priority over A1C Bays' case. However, given the short length of A1C Bays' record of trial, undersigned counsel has been able to fully review his record and advise him regarding potential errors. Undersigned counsel anticipates being able to complete A1C Bays' brief in between a higher priority case but has not yet had time to begin drafting. Moreover, undersigned counsel believes she will need the entire 30-day requested enlargement because her second and third priority cases need to be completed as soon as possible, which may not allow her time to work on A1C Bays' brief.

The cases with higher priority are:

1. *United States v. George, Jr.*, USCA Dkt. No. 24-0206/AF – The appellant's reply brief for a granted issue was filed at the Court of Appeals for the Armed Forces (CAAF) on Monday, 25 November 2024. Currently, undersigned counsel is dedicating her time to preparing for oral argument which is scheduled to occur on 10 December 2024.
2. *United States v. Casillas*, No. ACM 40551 – The record of trial includes 19 prosecution exhibits, 4 defense exhibits, 65 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 14 December 2023. Undersigned counsel has begun her review and is coordinating with the appellant to identify the

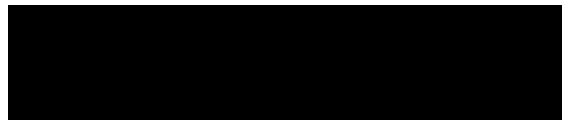
issues that the appellant wants to raise, however, she needs to complete her review, conduct research, draft the numerous identified assignments of error, and edit the resulting brief before filing. Moreover, discussing the issues with the Appellant is an involved process due to the need to schedule calls across time zones when the confinement facility has availability.

3. *United States v. Dawson*, No. ACM 24041 – The record of trial includes 13 prosecution exhibits, 9 defense exhibits, 1 court exhibit, 41 appellate exhibits, and 761 transcript pages. The appellant is not confined. Undersigned counsel has prioritized this case above others because it was docketed on 4 October 2023. This Court and undersigned counsel received the verbatim transcript on 9 August 2024.
4. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined, and his case was docketed on 26 January 2024.
5. *United States v. Blair*, No. ACM S32778 – The record of trial includes 7 prosecution exhibits, 22 defense exhibits, 6 appellate exhibits, and 187 transcript pages. The appellant is not confined, and his case was docketed on 22 April 2024.
6. *United States v. Roberts*, No. ACM 40608 – The 11-volume record of trial includes 30 prosecution exhibits, 3 defense exhibits, 1 court exhibit, 102 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 7 May 2024.

7. *United States v. Robinson*, No. ACM 24044 – The 10-volume record of trial includes 23 prosecution exhibits, 8 defense exhibits, 58 appellate exhibits, and 1,112 transcript pages. The appellant is not confined, and his case was docketed on 30 May 2024.
8. *United States v. Lovell*, No. ACM 40614 – The record of trial includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. The appellant is not confined, and his case was docketed on 31 May 2024.
9. *United States v. Shirley*, No. ACM 40618 – The record of trial includes 3 prosecution exhibits, 2 defense exhibits, 8 appellate exhibits, and 153 transcript pages. The appellant is confined, and his case was docketed on 5 June 2024.
10. *United States v. Tompkins*, No. ACM 40619 – The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. The appellant is confined, and his case was docketed on 11 June 2024.

**WHEREFORE**, A1C Bays respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

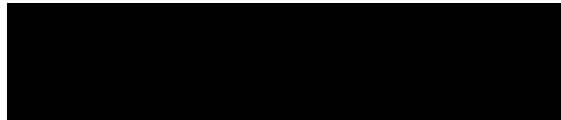


SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.golseth@us.af.mil

**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 27 November 2024.

Respectfully submitted,



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Appellate Defense Counsel  
Air Force Appellate Defense Division  
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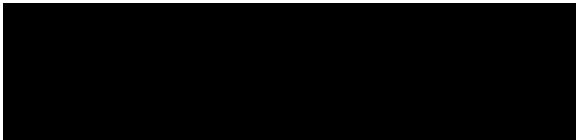
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman First Class (E-3)	)	ACM 24043
JAMES D. BAYS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3

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

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

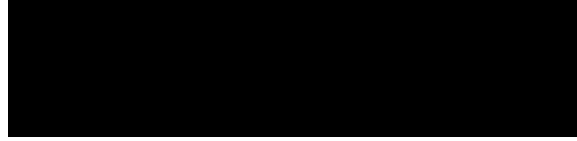
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**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 3 December 2024.



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

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

UNITED STATES	)	No. ACM 24043
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
James D. BAYS	)	
Airman First Class (E-3)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 6 December 2024, this court granted Appellant’s Motion for Enlargement of Time (Second), requiring Appellant to file his assignments or error not later than 9 January 2025. The court further advised:

[A]ny subsequent motions for enlargement of time shall include, in addition to matters required under this court’s Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant’s right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel’s progress on Appellant’s case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.

On 30 December 2024, Appellant submitted a Motion for Enlargement of Time (Third) requesting an additional 30 days to submit Appellant’s assignments or error. The motion states that, “given the short length of [Appellant’s] record of trial, undersigned counsel has been able to fully review his record and advise him regarding potential errors,” notwithstanding that Appellant’s counsel is assigned to six higher priority cases pending before this court. However, Appellant’s motion does not specifically provide the four pieces of information required by this court’s 6 December 2024 order, as quoted above. The Government generally opposes Appellant’s motion.

In light of the reported progress Appellant’s counsel has made in reviewing Appellant’s case—including consulting with Appellant regarding potential errors to raise—and in the interest of judicial efficiency, the court finds it appropriate to grant the requested enlargement of time in spite of Appellant’s failure to specifically provide the information required by this court’s prior order.

However, the requirements remain in effect and the court expects the parties to comply with its orders.

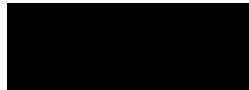
Accordingly, it is by the court on this 3d day of January, 2025,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Third) is **GRANTED**. Appellant shall file any assignments of error not later than **8 February 2025**.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(THIRD)</b>
v.	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force,	)	
<i>Appellant.</i>	)	30 December 2024

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

Airman First Class (A1C) James D. Bays, Appellant, hereby moves for a third enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). A1C Bays requests an enlargement for a period of 30 days, which will end on **8 February 2025**. A1C Bays’ case was docketed with this Court on 8 July 2024, but this Court had not yet received the record of trial in his case. Notice of Docketing. On 12 August 2024, this Court received his record of trial, beginning the time-period for A1C Bays to file his assignments of error. JT. CT. CRIM. APP. R. 18(d)(2). From the date of docketing to the present date, 175 days have elapsed. On the date requested, 215 days will have elapsed.

At Osan Air Base, Republic of Korea, a military judge at a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), convicted A1C Bays, consistent with his pleas, of one specification of failure to go to his place of duty, two specifications of dereliction of duty, and two specifications of drunk on duty, in violation of Articles 86, 92, and 112, UCMJ. Entry of Judgment, 12 December 2023. The military judge sentenced A1C Bays to confinement for a total of 45 days, reduction in pay grade to E-1, forfeiture of \$500 pay per month for 90 days, and a reprimand. Statement of Trial Results, 17 November 2023. The convening authority took no action on the findings or sentence in the case.

Convening Authority Decision on Action, 4 December 2023. The record of trial includes 3 prosecution exhibits, 4 defense exhibits, 4 appellate exhibits, and 154 transcript pages

Undersigned counsel currently represents 20 clients and is presently assigned as sole counsel on 8 cases pending initial brief before this Court, to include A1C Bays' brief. Through no fault of A1C Bays, undersigned counsel has been working on other assigned matters and has yet to complete his assignment of error brief. Based on the date of docketing, there are currently six cases that have priority over A1C Bays' case. However, given the short length of A1C Bays' record of trial, undersigned counsel has been able to fully review his record and advise him regarding potential errors. Undersigned counsel anticipates being able to complete A1C Bays' brief in between a higher priority case but has not yet had time to begin drafting. Moreover, undersigned counsel believes she will need the entire 30-day requested enlargement because her first and second priority cases need to be completed as soon as possible, which does not allow her time to work on A1C Bays' brief.

The cases with higher priority are:

1. *United States v. Casillas*, No. ACM 40551 – The record of trial includes 19 prosecution exhibits, 4 defense exhibits, 65 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 14 December 2023. Undersigned counsel has completed her review and anticipates drafting at least nine assignments of error, which will need to be reviewed and edited before filing. Given the complexity of this case and undersigned counsel's need for more time to complete the appellant's brief, the appellant has moved, with the Government's consent, for an enlargement of time to file the appellant's brief on 17 January 2025.

2. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined, and his case was docketed on 26 January 2024.
3. *United States v. Roberts*, No. ACM 40608 – The 11-volume record of trial includes 30 prosecution exhibits, 3 defense exhibits, 1 court exhibit, 102 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 7 May 2024.
4. *United States v. Robinson*, No. ACM 24044 – The 10-volume record of trial includes 23 prosecution exhibits, 8 defense exhibits, 58 appellate exhibits, and 1,112 transcript pages. The appellant is not confined, and his case was docketed on 30 May 2024.
5. *United States v. Lovell*, No. ACM 40614 – The record of trial includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. The appellant is not confined, and his case was docketed on 31 May 2024.
6. *United States v. Tompkins*, No. ACM 40619 – The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. The appellant is confined, and his case was docketed on 11 June 2024.

**WHEREFORE**, A1C Bays respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



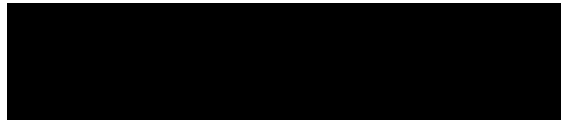
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**CERTIFICATE OF FILING AND SERVICE**

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Respectfully submitted,



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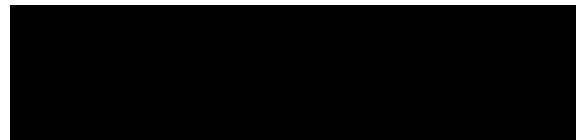
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman First Class (E-3)	)	ACM 24043
JAMES D. BAYS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3

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

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

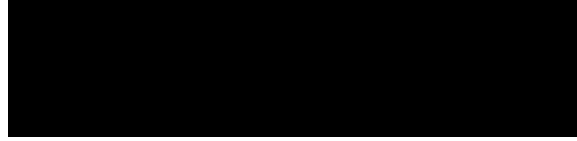
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**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 December 2024.



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

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

UNITED STATES,	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(FOURTH)</b>
v.	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force,	)	
<i>Appellant.</i>	)	27 January 2025

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

Airman First Class (A1C) James D. Bays, Appellant, hereby moves for a fourth enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). A1C Bays requests an enlargement for a period of 30 days, which will end on **9 March 2025**. A1C Bays’ case was docketed with this Court on 8 July 2024, but this Court had not yet received the record of trial in his case. Notice of Docketing. On 12 August 2024, this Court received his record of trial, beginning the time-period for A1C Bays to file his assignments of error. JT. CT. CRIM. APP. R. 18(d)(2). From the date this Court received A1C Bays’ record of trial to the present date, 168 days have elapsed. From the date this Court received A1C Bays’ record of trial to the date requested, 209 days will have elapsed.<sup>1</sup>

At Osan Air Base, Republic of Korea, a military judge at a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), convicted A1C Bays, consistent with his pleas, of one specification of failure to go to his place of duty, two specifications of dereliction of duty, and two specifications of drunk on duty, in violation of Articles 86, 92, and 112, UCMJ. Entry of Judgment, 12 December 2023. The military

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<sup>1</sup> From the date of docketing to the present date, 203 days have elapsed. *See* A.F. CT. CRIM. APP. 23.3(m)(4). On the date requested, 244 days will have elapsed from the date of docketing. *Id.*

judge sentenced A1C Bays to confinement for a total of 45 days, reduction in pay grade to E-1, forfeiture of \$500 pay per month for 90 days, and a reprimand. Statement of Trial Results, 17 November 2023. The convening authority took no action on the findings or sentence in the case. Convening Authority Decision on Action, 4 December 2023. The record of trial includes 3 prosecution exhibits, 4 defense exhibits, 4 appellate exhibits, and 154 transcript pages

Undersigned counsel currently represents nineteen clients and is presently assigned as sole counsel on seven cases pending initial brief before this Court, to include A1C Bays' brief. Through no fault of A1C Bays, undersigned counsel has been working on other assigned matters and has yet to complete his assignment of error brief. Based on the date of docketing, there are currently five cases that have priority over A1C Bays' case. However, given the short length of A1C Bays' record of trial, undersigned counsel has been able to fully review his record and advise him regarding potential errors. Undersigned counsel anticipates being able to complete A1C Bays' brief in between a higher priority case but has not yet had time to begin drafting. Undersigned counsel believes she will need the entire 30-day requested enlargement because undersigned counsel anticipates working to complete and file her first priority case (discussed below) by or before 19 February 2025 to avoid requesting an eleventh enlargement of time in that case. Undersigned counsel will also be attending a two-day training course on 19-20 February 2025, and participating in six moot arguments as a moot judge on 11 February, 18 February, and 21 February 2025. During the requested enlargement of time, there will also be a family day (14 February 2025) and federal holiday (17 February 2025) when this Court and undersigned counsel's office will be closed.

A1C Bays has (1) been advised of his right to timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, and (3) advised of this request for an

enlargement of time. *See* Order, *United States v. Bays*, No. ACM 24043, 6 December 2024 (ordering undersigned counsel to provide the information contained in (1)-(3) of the preceding sentence). A1C Bays agrees with this request for an enlargement of time. *See id.* (ordering undersigned counsel to provide whether appellant agrees with this request).

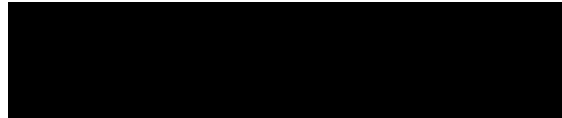
The cases with a higher priority than A1C Bays' case are:

1. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined, and his case was docketed on 26 January 2024.
2. *United States v. Roberts*, No. ACM 40608 – The 11-volume record of trial includes 30 prosecution exhibits, 3 defense exhibits, 1 court exhibit, 102 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 7 May 2024.
3. *United States v. Robinson*, No. ACM 24044 – The 10-volume record of trial includes 23 prosecution exhibits, 8 defense exhibits, 58 appellate exhibits, and 1,112 transcript pages. The appellant is not confined, and his case was docketed on 30 May 2024.
4. *United States v. Lovell*, No. ACM 40614 – The record of trial includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. The appellant is not confined, and his case was docketed on 31 May 2024.
5. *United States v. Tompkins*, No. ACM 40619 – The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. The appellant is confined, and his case was docketed on 11 June 2024.

Lastly, in addition to her priorities before this Court, she will also be drafting a petition and supplement for filing at the U.S. Court of Appeals for the Armed Forces on or before 27 February 2025 in *United States v. Benoit*, No. ACM 40508.

**WHEREFORE**, A1C Bays respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

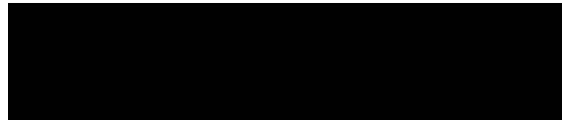


SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.golseth@us.af.mil

**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 27 January 2025.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
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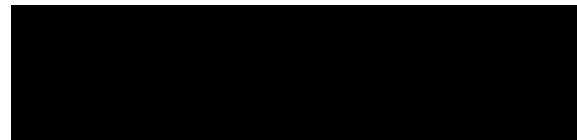
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman First Class (E-3)	)	ACM 24043
JAMES D. BAYS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3

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

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

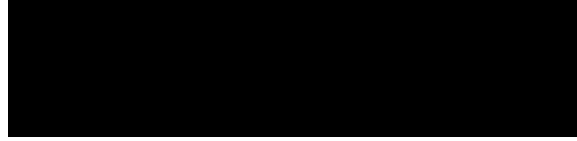
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 29 January 2025.



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

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

UNITED STATES,	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(FIFTH)</b>
v.	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force,	)	
<i>Appellant.</i>	)	27 February 2025

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

Airman First Class (A1C) James D. Bays, Appellant, hereby moves for a fifth enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). A1C Bays requests an enlargement for a period of 30 days, which will end on **8 April 2025**. A1C Bays’ case was docketed with this Court on 8 July 2024, but this Court had not yet received the record of trial in his case. Notice of Docketing. On 12 August 2024, this Court received his record of trial, beginning the time-period for A1C Bays to file his assignments of error. JT. CT. CRIM. APP. R. 18(d)(2). From the date this Court received A1C Bays’ record of trial to the present date, 199 days have elapsed. From the date this Court received A1C Bays’ record of trial to the date requested, 239 days will have elapsed.<sup>1</sup>

At Osan Air Base, Republic of Korea, a military judge at a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), convicted A1C Bays, consistent with his pleas, of one specification of failure to go to his place of duty, two specifications of dereliction of duty, and two specifications of drunk on duty, in violation of Articles 86, 92, and 112, UCMJ. Entry of Judgment, 12 December 2023. The military

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<sup>1</sup> From the date of docketing to the present date, 234 days have elapsed. *See* A.F. CT. CRIM. APP. 23.3(m)(4). On the date requested, 274 days will have elapsed from the date of docketing. *Id.*

judge sentenced A1C Bays to confinement for a total of 45 days, reduction in pay grade to E-1, forfeiture of \$500 pay per month for 90 days, and a reprimand. Statement of Trial Results, 17 November 2023. The convening authority took no action on the findings or sentence in the case. Convening Authority Decision on Action, 4 December 2023. The record of trial includes 3 prosecution exhibits, 4 defense exhibits, 4 appellate exhibits, and 154 transcript pages.

Through no fault of A1C Bays, undersigned counsel has been working on other assigned matters and has yet to complete his assignment of error brief, though she has completed her review of his record of trial. A1C Bays has (1) been advised of his right to timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, and (3) advised of this request for an enlargement of time. *See Order, United States v. Bays*, No. ACM 24043, 6 December 2024 (ordering undersigned counsel to provide the information contained in (1)-(3) of the preceding sentence). A1C Bays agrees with this request for an enlargement of time. *See id.* (ordering undersigned counsel to provide whether appellant agrees with this request).

Undersigned counsel's workload includes representing 18 clients.<sup>2</sup> Undersigned counsel continues to be the sole counsel on four cases that are currently pending initial brief before this Court. Two cases have priority over the present case<sup>3</sup>:

1. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The

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<sup>2</sup> Undersigned counsel has filed a motion to withdraw as appellate defense counsel in *United States v. Lovell*, No. ACM 40614, and *United States v. Mabida*, No. ACM 40682.

<sup>3</sup> Mr. Dwight Sullivan is now lead counsel for *United States v. Roberts*, No. ACM 40608. Undersigned counsel has reprioritized SrA Bays' case over *United States v. Robinson*, No. ACM 24044, given the clarity for brief filing deadlines from Rule 18(d)(2) of the Joint Rules of Appellate Procedure, and the fact that she has already completed her review of SrA Bays' record of trial.

appellant is not confined, and his case was docketed on 26 January 2024. The appellant's brief will be filed with this Court on 7 March 2025.

2. *United States v. Tompkins*, No. ACM 40619 – The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. The appellant is confined, and his case was docketed on 11 June 2024.

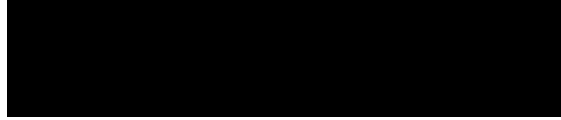
In addition to the above priority, undersigned counsel anticipates:

- On 3 March 2025, she will participate in a moot argument as a moot judge;
- On 5 March 2025, she will attend oral argument in *United States v. Jenkins*, No. ACM S32765;
- From 3 March – 10 March 2025, she will be reviewing and responding to the Government's answer brief in *United States v. Casillas*, No. ACM 40551 (involving twelve issues);
- She will then turn her attention to filing a supplemental brief before the U.S. Court of Appeals in *In re Alton*, Misc. Dkt. No. 2024-12, by or before 17 March 2025; and *United States v. Benoit*, ACM No. 40508, by or before 21 March 2025.
- She will draft and file by 21 March 2025, at the appellant's personal request, a motion for reconsideration in *United States v. Daniels*, ACM No. 39407 (rem).
- She will participate as a moot judge in advance of argument and attend argument on 19 March 2025, for *United States v. Taylor*, USCA Dkt. No. 24-0234/AF.
- Lastly, she will be on leave overseas from 24 March – 3 April 2025.

Considering all of the above priorities, undersigned counsel endeavors to begin focusing on SrA Bays' brief around 17 March 2025.

**WHEREFORE**, A1C Bays respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.golseth@us.af.mil

**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 27 February 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Samantha P. Golseth.

SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
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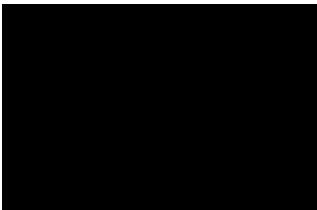
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force	)	
<i>Appellant.</i>	)	28 February 2025

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

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



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 28 February 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809

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

UNITED STATES,	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(SIXTH)</b>
v.	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force,	)	
<i>Appellant.</i>	)	22 March 2025

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

Airman First Class (A1C) James D. Bays, Appellant, hereby moves for a sixth enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). A1C Bays requests an enlargement for a period of 30 days, which will end on **8 May 2025**. A1C Bays’ case was docketed with this Court on 8 July 2024,<sup>1</sup> but this Court had not yet received the record of trial in his case. Notice of Docketing. On 12 August 2024, this Court received his record of trial, beginning the time-period for A1C Bays to file his assignments of error. JT. CT. CRIM. APP. R. 18(d)(2). From the date this Court received A1C Bays’ record of trial to the present date, 222 days have elapsed. From the date this Court received A1C Bays’ record of trial to the date requested, 269 days will have elapsed.

At Osan Air Base, Republic of Korea, a military judge at a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ), convicted A1C Bays, consistent with his pleas, of one specification of failure to go to his place of duty, two specifications of dereliction of duty, and two specifications of drunk on duty, in violation of Articles 86, 92, and 112, UCMJ. Entry of Judgment, 12 December 2023. The military

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<sup>1</sup> From the date of docketing to the present date, 257 days have elapsed. See A.F. CT. CRIM. APP. 23.3(m)(4). On the date requested, 304 days will have elapsed from the date of docketing. *Id.*

judge sentenced A1C Bays to confinement for a total of 45 days, reduction in pay grade to E-1, forfeiture of \$500 pay per month for 90 days, and a reprimand. Statement of Trial Results, 17 November 2023. The convening authority took no action on the findings or sentence in the case. Convening Authority Decision on Action, 4 December 2023. The record of trial includes 3 prosecution exhibits, 4 defense exhibits, 4 appellate exhibits, and 154 transcript pages.

Through no fault of A1C Bays, undersigned counsel has been working on other assigned matters and has yet to complete A1C Bays' assignment of error brief, though she has completed her review of his record of trial. A1C Bays has (1) been advised of his right to timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, and (3) advised of this request for an enlargement of time. *See Order, United States v. Bays*, No. ACM 24043, 6 December 2024 (ordering undersigned counsel to provide the information contained in (1)-(3) of the preceding sentence). A1C Bays agrees with this request for an enlargement of time. *See id.* (ordering undersigned counsel to provide whether appellant agrees with this request).

Undersigned counsel's workload includes representing 16 clients. One case has priority over the present case:

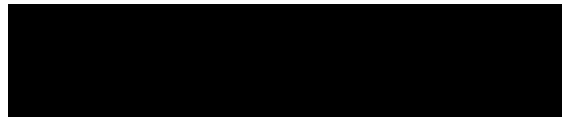
1. *United States v. Tompkins*, No. ACM 40619 – The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. The appellant is confined, and his case was docketed on 11 June 2024.

Undersigned counsel will also be on leave on 23 March 2025 through 3 April 2025, and not available to work on A1C Bays' nor the case with higher priority during these dates. Nevertheless, undersigned counsel fully expects that this will be last enlargement of time requested in this case.

Since undersigned counsel filed A1C Bays' request for a fifth enlargement of time, she accomplished the following matters: (1) Brief on Behalf of the Appellant in *United States v. Hagen*, No. ACM 40561, addressing fourteen issues; (2) Reply Brief in *United States v. Casillas*, No. ACM 40551, replying to two issues (after reviewing the Government's eighty page brief and voluminous attachments); (3) Supplement to the Petition for Grant of Review in *United States v. Benoit*, USCA Dkt. No. 25-0106/AF, No. ACM 40508; (4) Petition and Supplement to the Petition for Grant of Review in *United States v. Cole*, USCA Dkt. No. 25-0117/AF, No. ACM 40189; (5) Petition for Writ of Extraordinary Relief in *In re Alton*, Misc. Dkt. No. 2024-12, for filing at the U.S. Court of Appeals for the Armed Forces (drafting with civilian counsel); (6) various motions in *United States v. Casillas*, No. ACM 40551, and *United States v. Daniels*, No. ACM 39407 (rem). She also prepared for and participated in moot arguments for *United States v. Jenkins*, No. ACM S32765, and *United States v. Taylor*, USCA Dkt. No. 24-0234/AF; and attended oral argument for *Taylor*. On 4 March 2025, undersigned counsel was also unexpectedly unable to complete work when her office was evacuated for several hours.

**WHEREFORE**, A1C Bays respectfully requests this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

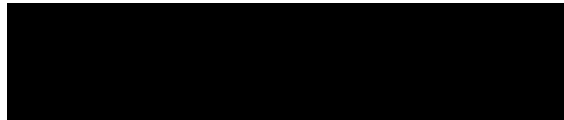


SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.golseth@us.af.mil

**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 22 March 2025.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
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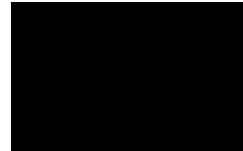
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 3
Airman First Class (E-3)	)	
<b>JAMES D. BAYS,</b>	)	No. ACM 24043
United States Air Force,	)	
<i>Appellant.</i>	)	24 March 2025

**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.

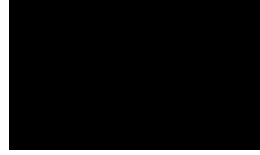
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 24 March 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809

UNITED STATES ) No. ACM 24043  
*Appellee* )  
) )  
v. )  
) NOTICE OF PANEL CHANGE  
James D. BAYS )  
Airman First Class (E-3) )  
U.S. Air Force )  
*Appellant* )

OLGA STANFORD, Capt, USAF  
Chief Commissioner



UNITED STATES, ) **BRIEF ON BEHALF OF**  
*Appellee,* ) **APPELLANT**  
) )  
v. ) Before Panel No. 3  
) )  
Airman First Class (E-3) ) No. ACM 24043  
**JAMES D. BAYS,** ) )  
United States Air Force, ) 6 May 2025  
*Appellant.* )

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

## Assignment of Error

**Whether Appellant’s sentence is inappropriate.<sup>1</sup>**

## Statement of the Case

At Osan Air Base, Republic of Korea, a military judge at a special court-martial consisting of a military judge alone pursuant to Article 16(c)(2)(A), Uniform Code of Military Justice (UCMJ)<sup>2</sup>, convicted Airman First Class (A1C) James D. Bays, Appellant, consistent with his pleas, of one specification of failure to go to his place of duty, two specifications of dereliction of duty, and two specifications of drunk on duty, in violation of Articles 86, 92, and 112, UCMJ, 10 U.S.C. §§ 886, 892, 912 (2018). R. at 10, 79; Entry of Judgment. The military judge sentenced A1C Bays to confinement for a total of forty-five days, reduction in pay grade to E-1, forfeiture of \$500 pay per month for ninety days, and a reprimand. R. at 153; Statement of Trial Results. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

<sup>1</sup> This issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and can be located be in the appendix.

<sup>2</sup> Unless otherwise noted, all reference to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

## Statement of Facts

At the time of the incidents in this case, A1C Bays was not okay because his grandfather had just passed away. R. at 101. More than that, A1C Bays had a problem with alcohol and needed help, a problem for which he acknowledged and took full responsibility. R. at 131; Def. Ex. D at 2. A1C Bays pleaded guilty to each charge and specification alleged without the benefit of a plea agreement. R. at 10, 75. He did not make excuses. *See, e.g.*, R. at 131. He owned that he alone was responsible for his actions, and he apologized for them. *Id.*; Def. Ex. D at 2.

### *Failure to Go (Charge I, Specification)*

A1C Bays was required to report for duty at 0700 hours on 31 July 2023. R. at 17. He did not report to duty at 0700 hours because he overslept. R. at 18. Another Airman was able to wake A1C Bays at 0715 hours and A1C Bays reported to work fifteen minutes later at 0730 hours. *Id.* This duty shift was not A1C Bays's usual shift. R. at 19. When he overslept and failed to arrive to work on time, he was working an alternate shift with longer-than-usual hours. *Id.* He overslept because he had accidentally set his alarm to wake him in the night instead of the morning. R. at 22. A1C Bays admitted his conduct was wrongful because he did not take the initiative to set his alarm clock properly. R. at 24. For this offense, A1C Bays was sentenced to confinement for five days, to be served concurrently with each of the other charges and specifications. R. at 153.

### *Willful Dereliction of Duty (Charge II, Specification I)*

A1C Bays had a duty not to consume alcohol within the eight-hour period prior to his work shift. R. at 25-26, 29. Aware of this duty and that he was scheduled to work at 0700 on 31 July 2023, A1C Bays drank alcohol after 2300 hours on 30 July 2023, within eight hours of when he was scheduled for work. R. at 25-27, 29-35. A1C Bays could have performed his duty by not consuming alcohol but admitted he intentionally chose not to. R. at 35-36. For this offense,

A1C Bays was sentenced to confinement for thirty days, to be served concurrently with each of the other charges and specifications. R. at 153.

*Willful Dereliction of Duty (Charge II, Specification 2)*

A1C Bays knew he had a duty to refrain from arming up with loaded firearms while intoxicated. R. at 38-39. On 31 July 2023, A1C Bays got two firearms from the armorer and loaded the firearms while intoxicated. R. at 40. A1C Bays could have performed his duty by not consuming alcohol before arming up, but he admitted that he chose to drink alcohol with the intention that he would be intoxicated when he armed up. R. at 48. For this offense, A1C Bays was sentenced to confinement for forty-five days, to be served concurrently with each of the other charges and specifications. R. at 153.

*Drunk on Duty (Charge III, Specification 1)*

A1C Bays was drunk on duty on 31 July 2023 because he had come on duty as an entry site controller with a blood alcohol content of 0.313. R. at 53-54, 60-61. For this offense, A1C Bays was sentenced to confinement for thirty days, to be served concurrently with each of the other charges and specifications. R. at 153.

*Drunk on Duty (Charge III, Specification 2)*

A1C Bays was drunk on duty on 17 August 2023 because prior to coming on duty at 0800, he had consumed six beers and fifteen one-ounce shots of alcohol. R. at 64-66. Seven-and-a-half hours after he came on duty, A1C Bays blood alcohol content remained 0.04. R. at 64, 67. For this offense, A1C Bays was sentenced to fifteen days, to be served concurrently with each of the other charges and specifications. R. at 153.

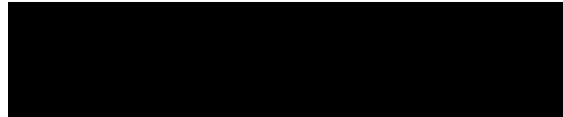
*A1C Bays's Character*

Despite A1C Bays's transgressions, he became the "go-to" person for the noncommissioned officer in charge (NCOIC) of police services. R. at 121. A1C Bays "[n]ever sat around stagnant." R. at 120. He was "always looking for something to stay proactive" and his NCOIC trusted him to do any tasking. R. at 120-21.

**Appellate Review of A1C Bays's Case**

The undersigned appellate defense counsel attests that she has carefully examined the record of trial in this case and discussed it with A1C Bays. A1C Bays personally requests that this Honorable Court consider the issue raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.golseth@us.af.mil

## APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), A1C Bays, through appellate defense counsel, personally requests that this Court consider the following matter:

### **Appellant's sentence is inappropriate.**

#### *Standard of Review*

This Court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

#### *Law and Analysis*

A1C Bays's sentence is inappropriate because his sentence is greater than necessary.

This Court "may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). In evaluating whether a sentence should be approved, this Court considers "the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Bare*, 63 M.J. 707, 714 (A.F. Ct. Crim. App. 2006) (citing *United States v. Healy*, 26 M.J. 394, 395-96 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982)).

This Court cannot grant mercy, but it is empowered to "do justice." *United States v. Nerad*, 69 M.J. 138, 146 (C.A.A.F. 2010) (citing *United States v. Boone*, 49 M.J. 187, 192 (C.A.A.F. 1998)). For example, while considering the appellant and the nature and seriousness of the offenses, this Court must consider whether the sentencing authority abided by Rule for Courts-Martial (R.C.M.) 1002(f). R.C.M. 1002(f) states the sentencing authority "shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces." If the sentence imposed is greater than necessary,

this Court's role is to do justice by correcting the inappropriate sentence.

Furthermore, this Court considers not only the appropriateness of the entire sentence, *United States v. Sessions*, 45 C.M.R. 931, 931 (C.M.A. 1972), but also the "appropriateness of each segment of a segmented sentence." *United States v. Flores*, 84 M.J 277, 281 (C.A.A.F. 2024).

A1C Bays's sentence is inappropriately severe given the facts of his case. For example, arriving at work thirty minutes late because he set his alarm clock incorrectly does not necessitate five days of confinement, especially when this appeared to be a singular instance of tardiness. Therefore, this confinement sentence is inappropriate under R.C.M. 1002(f) because it is greater than necessary. Furthermore, all but one specification is rooted in A1C Bays's duty performance on 30 July 2023 and 31 July 2023. This Honorable Court should exercise its authority under Article 66, UCMJ, to individually evaluate the component parts of A1C Bays's sentence and approve only an appropriate sentence.

**WHEREFORE**, A1C Bays respectfully requests this Honorable Court to approve only an appropriate sentence.

## **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 6 May 2025.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: samantha.golseth@us.af.mil

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

<b>UNITED STATES,</b> <i>Appellee,</i>	)	ANSWER TO ASSIGNMENTS OF
	)	ERROR
	)	
v.	)	Before Panel No. 3
	)	
Airman First Class (E-3)	)	No. ACM 24043
<b>JAMES D. BAYS,</b>	)	
United States Air Force	)	23 May 2025
<i>Appellant.</i>	)	

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

**ISSUE PRESENTED<sup>1</sup>**

**WHETHER APPELLANT’S SENTENCE IS  
INAPPROPRIATE.**

**STATEMENT OF CASE**

The United States generally agrees with Appellant’s statement of the case.

**STATEMENT OF FACTS**

The 51st Security Forces Squadron, Osan Air Base, Republic of Korea, scheduled Appellant for duty beginning at 0700 on 31 July 2023 to perform law enforcement duties, specifically as a member of the live arm element, and Appellant acknowledged his duty to report to work. (R. at 18, 100.). The performance of law enforcement duties requires personnel to arm up with loaded firearms as well as to refrain from drinking alcohol eight hours prior to a scheduled shift. (R. at 26-27.). However, on 30 July 2023, despite knowing this eight-hour cutoff at 2300 (2300 is eight hours prior to 0700 duty), Appellant drank alcohol from approximately 2000 until sometime before midnight. (R. at 26-27.). Appellant drank “a six-pack of long neck bottled Bud

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



Light [beer] and six three-ounce shots of whiskey.” (R. at 26-27, 41, 54.). Subsequently, Appellant set his alarm clock incorrectly, overslept, and arrived thirty minutes late to work. (R. at 18, 22-23.). After arriving at work, Appellant went to the armory and received a radio, baton, an M4 rifle, an M18 pistol and 248 rounds of ammunition. (R. at 40, 97-99.) Then, Appellant loaded his magazines and attended the guard mount brief. (R. at 40, 101). After guard mount, MSgt L.V. asked Appellant, “are you okay?” and Appellant replied, “he was going through some family issues.” (R. at 101.). MSgt L.V. then asked if Appellant if he was drunk and Appellant stated “no.” (R. at 101.). Shortly thereafter, SrA E.Y. saw Appellant “go down to, kind of, a knee,” asked twice if he was okay and Appellant replied affirmatively. (R. at 103.). SrA E.Y., remaining concerned, asked a third time and after this third attempt, Appellant did not respond. (R. at 103-104.). After receiving no response, SrA E.Y. disarmed Appellant and removed his M4 Rifle. (R. at 104). At this point, approximately five security forces members assisted in removing Appellant’s gear, laying Appellant down, and calling for medical assistance. (R. at 104-105.). An ambulance took Appellant to the hospital and at 0830, his blood alcohol content measured 0.313. (R. at 40, 56, 60-61.).

On 17 August 2023, the 51st Security Forces Squadron scheduled Appellant for duty beginning at 0800. (R. at 64). The night before, 16 August 2023, Appellant drank “[a] six pack of longneck bottle Bud Lights” and “approximately 15 one-ounce shots of whiskey between approximately 1800 to 2200.” (R. at 64). After arriving at work on 17 August 2023, Appellant submitted to administrative booking procedures (unrelated to his actions on 17 August 2023 and due to his previous misconduct), and investigators smelled alcohol on Appellant’s breath. (R. at 64.). Appellant’s blood alcohol content measured at 0.04 at 1530 on 17 August 2024. (R. at 64.). At trial, the military judge recognized Dr. E.S. as an expert in forensic toxicology and Dr. E.S.

testified Appellant’s blood alcohol content measured between 0.011 to 0.24 at 0800 on 17 August 2023. (R. at 93.).

The military judge sentenced Appellant to a reduction in grade to E-1; forfeiture of \$500.00 pay for 90 days; and 45 days of confinement, all adjudged confinement running concurrently. (*Convening Authority Decision on Action*, 4 December 2023, ROT Vol. 1.). Specifically, the military judge adjudged: five days of confinement for the Specification of Charge I, in violation of Article 86, UCMJ, failure to go; 30 days of confinement for Specification 1 of Charge II, in violation of Article 92, UCMJ, dereliction of duty for failing to refrain from consuming alcohol eight hours prior to duty; 45 days confinement for Specification 2 of Charge II, in violation of Article 92, UCMJ, dereliction of duty for arming up while intoxicated; 30 days of confinement for Specification 1 of Charge III, in violation of Article 112, UCMJ, drunk on duty; and 15 days of confinement for Specification 2 of Charge III, in violation of Article 112, UCMJ, drunk on duty. (*Entry of Judgment*, 12 December 2023, ROT, Vol. 1; R. at 153.). The convening authority approved the sentence without modification. (*Convening Authority Decision on Action*, 4 December 2023, ROT Vol. 1.).

### **ARGUMENT**

**APPELLANT’S      APPROVED      SENTENCE      IS  
APPROPRIATE.**

#### ***Standard of Review***

The standard of review for sentence appropriateness is a de novo review. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006). The Court may only affirm the sentence if it finds the sentence to be “correct in law and fact and determines, on the basis of the entire record, [it] should be approved.” Article 66(d)(1), UCMJ.

### *Law*

Sentence appropriateness is assessed “by considering the particular appellant, the nature and seriousness of the offense, the appellant’s record of service, and all matters contained in the record of trial.” United States v. Anderson, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). Although this Court has great discretion to determine whether a sentence is appropriate, the Court has no authority to grant mercy. United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010) (citation omitted). Unlike the act of bestowing mercy through clemency, which was delegated to other channels by Congress, CCAs are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. United States v. Healy, 26 M.J. 394, 395-96 (C.M.A. 1988).

### *Analysis*

Appellant asserts the military judge adjudged an inappropriately severe sentence for both (1) five days of confinement adjudged from the Specification of Charge I, in violation of Article 86, UCMJ, failure to go (five days confinement); and (2) 45 days confinement adjudged from the Specifications arising from a singular course of events on 30-31 June 2023. (App. Br. at Appx. 1-2). Specifically, the military judge adjudged confinement, to run concurrently, for the following offenses: five days of confinement for the Specification of Charge I, in violation of Article 86, UCMJ, failure to go; 30 days of confinement for Specification 1 of Charge II, in violation of Article 92, UCMJ, dereliction of duty for failing to refrain from consuming alcohol eight hours prior to duty; 45 days confinement for Specification 2 of Charge II, in violation of Article 92, UCMJ, dereliction of duty for arming up while intoxicated; and 30 days of confinement for Specification 1 of Charge III, in violation of Article 112, UCMJ, drunk on duty. (*Entry of Judgment*, 12

December 2023, ROT, Vol. 1.). However, this Court should determine, based on the nature of the offenses and considering all the evidence, the military judge appropriately sentenced Appellant.

First, the military judge appropriately sentenced Appellant to five days of confinement for the Specification of Charge I, failure to go, in violation of Article 86, UCMJ. (*Entry of Judgment*, 12 December 2023, ROT, Vol. 1.). Appellant, in his Care<sup>2</sup> inquiry, explains, “I accidentally set it [the alarm] on P.M. instead of A.M., causing me to oversleep.” (R. at 18, 22-23.). However, Appellant fails to acknowledge the circumstances surrounding his failure to go. In his Care inquiry, Appellant admits, on the evening of 30 July 2023, he consumed alcohol from approximately 2000 until sometime before midnight and “drank a six-pack of long neck bottled Bud Light [beer] and six three-ounce shots of whiskey.” (R. at 26, 41, 54.). At approximately 0830 on 31 July 2023, Appellant’s blood alcohol level measured at 0.313. (R. at 40, 54.). Appellant overslept and likely failed to set his alarm correctly because of his alcohol impairment, not due to an administrative oversight. Appellant’s Care inquiry explanation demonstrates his minimization of his culpability, his low rehabilitative potential, and the necessity for punishment. Additionally, Appellant failed to demonstrate any prejudice from the adjudged confinement. The military judge ordered five days of confinement to run concurrently with any other adjudged confinement. Thus, the five days of confinement ran concurrently with the 45 days of confinement adjudged for Specification 2 of Charge II. (*Entry of Judgment*, 12 December 2023, ROT, Vol. 1.). The military judge appropriately sentenced Appellant for the Specification of Charge I.

Second, Appellant complains the military judge adjudged an inappropriately severe sentence because “all but one specification is rooted in A1C Bay’s duty performance on 30 July 2023 and 31 July 2023.” (Appr. Br. at Appx. 2). The Government charged four specifications,

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<sup>2</sup> United States v. Care, 40 C.M.R. 247 (C.M.A 1969).

stemming from one series of events, because each specification constituted a violation of the UCMJ, and each specification highlighted the nature and seriousness of the misconduct. First regarding failure to go, Appellant did not simply show up to work late, rather he failed to set his alarm correctly, most likely, because of his alcohol impairment. Second regarding consumption of alcohol, Appellant knew of his duty to refrain from consuming alcohol eight hours prior to duty, but he consumed alcohol regardless of his duty. (R. at 26.). Notably, Appellant did not drink one or two beers, but rather, Appellant drank “a six-pack of long neck bottled Bud Light [beer] and six three-ounce shots of whiskey.” (R. at 26, 41, 54.). Third, Appellant arrived for duty substantially intoxicated. (R. at 40.). Appellant’s blood alcohol content measured 0.313, almost four times the amount considered legally intoxicated (0.08). (R. at 40, 54.). Fourth regarding arming up intoxicated, Appellant arrived for duty intoxicated and attempted to perform live arm law enforcement duties on 31 July 2025. (R. at 100.). Appellant arrived at work, began to perform his law enforcement duties, despite his intoxication, and proceeded to the armory. (Pros. Ex. 2.). At the armory, Appellant requested the issuance of both non-lethal and lethal weapons. (R. at 97.). With a .313 blood alcohol content level, Appellant signed and took control of a baton, an M4 rifle, seven magazines of M4 ammunition (each magazine contained 30 rounds and 210 rounds total), an M18 pistol, and two magazines of M18 ammunition (38 rounds total). (R. at 97-99.). Appellant then walked to the clearing barrel and loaded the magazines into both firearms. (R. at 40.). At this point, Appellant controlled two fully loaded firearms while his blood alcohol content measured .313, almost four times the amount considered legally intoxicated.

Then, Appellant, despite his intoxication, continued to perform his law enforcement duties and attended guard mount to receive the daily battle brief. (R. at 38-39, 54, 100; Pros. Ex. 2.). At the conclusion of guard mount, MSgt L.V. specifically asked Appellant if was drunk and Appellant

lied to MSgt L.V. about his ability to perform his duties and his level of intoxication. (R. at 101.). Based on Appellant's actions, Appellant intended to perform law enforcement duties carrying a loaded firearm while substantially intoxicated. But for the Appellant requiring medical attention, Appellant would have performed his law enforcement duties carrying a loaded firearm while intoxicated. Appellant's law enforcement duties required Appellant to rely on his judgment in high-risk scenarios (*e.g.*, use of force), and base personnel and his fellow security forces relied on Appellant's judgement to respond appropriately. However, Appellant's judgment was substantially impaired with a blood alcohol level of .313. Appellant put both himself and base personnel at risk of harm. Therefore, although the misconduct stemmed from the same series of events, each offense separately and distinctly highlighted the serious nature of Appellant's acts. Also, Appellant failed to demonstrate any prejudice as the military judge directed the confinement sentences to run concurrently.

Further, the misconduct occurred while on duty in the presence of multiple squadron members. (R. at 100-101, 103-105.). Appellant showed up to duty late, failed to refrain from consuming alcohol eight hours prior to duty, had a blood alcohol level of 0.313, and armed up with loaded firearms intoxicated, all in front of his squadron members. Appellant passed out during the mandatory daily guard mount briefing and subsequently, an ambulance took Appellant to the hospital. Appellant's misconduct did not go unnoticed by other squadron members. The adjudged confinement appropriately furthers the principles of good order and discipline because the sentence ensures the squadron members understand this misconduct is not tolerated in the Air Force.

Additionally, Appellant's own words evidence his lack of accountability. In his unsworn statement, Appellant explained, "[i]t was the moment after I tested positive for alcohol at work for the second time..." Appellant did not merely "test positive for alcohol," rather Appellant reported

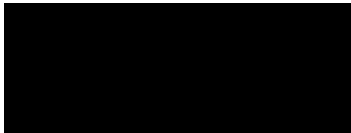
to duty drunk on two separate days. Appellant's description of his misconduct demonstrates the minimization of his culpability, his low rehabilitative potential, and the necessity for punishment.

Finally, the military judge appropriately recognized Appellant's guilty plea and the nature of the offenses as the military judge adjudged a sentence significantly lower than the maximum sentence (six months of confinement, reduction to the grade of E-1, forfeitures of two-thirds pay for six months, and a reprimand). (R. at 74.). Specifically, the military judge sentenced Appellant to be reprimanded, a reduction in grade to E-1, forfeiture of \$500.00 for three months, and 45 days confinement (to run concurrent, the Specification of Charge I - five days; Specification 1 of Charge II - 30 days; Specification 2 of Charge II - 45 days; Specification 1 of Charge III - 30 days; Specification 2 of Charge III - 15 days). (*Entry of Judgment*, 12 December 2023, ROT, Vol. 1; R. at 153.). Therefore, the military judge considered Appellant's guilty plea as well as the nature of the offenses.

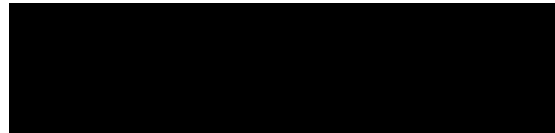
Evaluating the facts and circumstances in the record of Appellant's individual case, the seriousness of his offenses, his service record, his particular character, his rehabilitative potential, and in consideration of the entire record, this Honorable Court should leave his sentence undisturbed and affirm his entire approved 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.



CATHERINE K. M. WRAY, Lt Col, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations  
Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

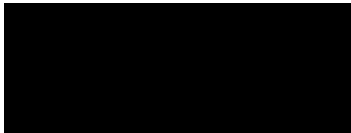


MARY ELLEN PAYNE  
Associate Chief  
Government Trial and Appellate Operations  
Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

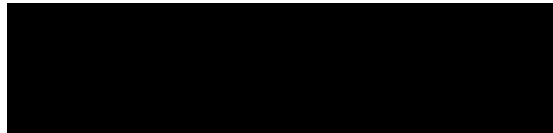


## **CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 23 May 2025.



CATHERINE K. M. WRAY, Lt Col, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations  
Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800



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

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

<b>UNITED STATES</b>	)	<b>No. ACM 24043</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>NOTICE OF</b>
<b>James D. BAYS</b>	)	<b>PANEL CHANGE</b>
<b>Airman First Class (E-3)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

It is by the court on this 17th day of July, 2025,

**ORDERED:**

The record of trial in the above styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review.

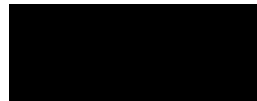
The Special Panel in this matter shall be constituted as follows:

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

This panel letter supersedes all previous panel assignments.



**FOR THE COURT**



**TANICA S. BAGMON**  
Appellate Court Paralegal