

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

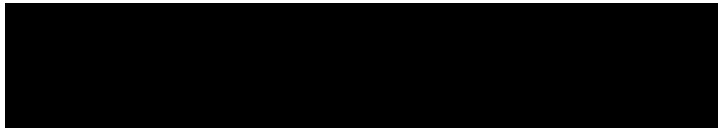
<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	7 March 2025
<i>Appellant.</i>	)	

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

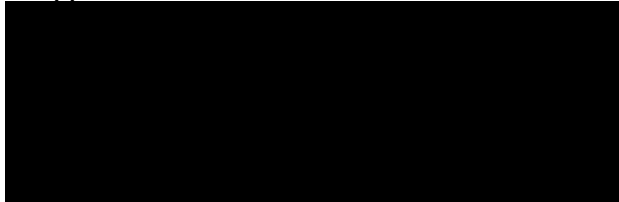
Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **16 May 2025**. The record of trial was docketed with this Court on 16 January 2025. From the date of docketing to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



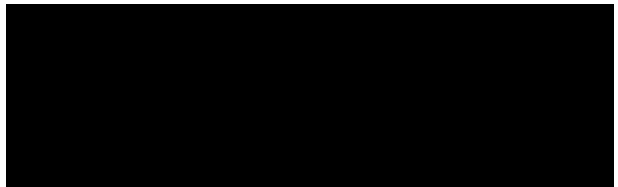
**CERTIFICATE OF FILING AND SERVICE**

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 7 March 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



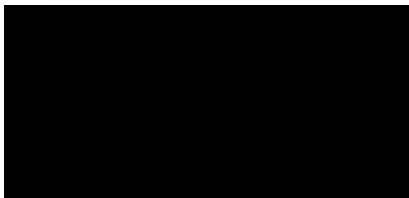
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E.R. CAREY</b>	)	
United States Air Force,	)	
<i>Appellant.</i>	)	10 March 2025

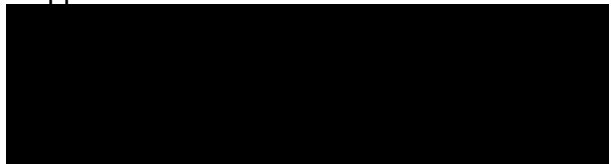
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

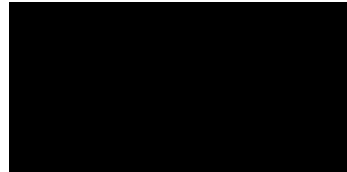


KATE E. LEE, Maj, USAF  
Appellate Government Counsel

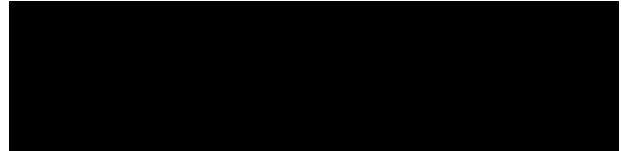


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 March 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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

UNITED STATES	)	No. ACM S32806
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
David E.R. CAREY	)	
Airman (E-2)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 7 March 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, this court’s Rules of Practice and Procedure, and applicable case law.

Accordingly, it is by the court on this 12th day of March, 2025,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error **not later than 16 May 2025**.

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits.

Appellant’s counsel is advised that any subsequent motions for enlargement of time shall include, in addition to the 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. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal. *See* A. F. Ct. Crim. App. R. 23.4.

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, will not be granted absent exceptional circumstances.



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Chief Commissioner

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 (SECOND)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	7 May 2025
<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 a second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **15 June 2025**. The record of trial was docketed with this Court on 16 January 2025. From the date of docketing to the present date, 111 days have elapsed. On the date requested, 150 days will have elapsed.

On 1 October 2024, a special court-martial consisting of a military judge alone at Joint Base Elmendorf-Richardson, Alaska, found Appellant guilty, consistent with his pleas, of one charge and one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 251; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 5 November 2024. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen days, and a bad-conduct discharge. R. at 289; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Amn David E. R. Carey*, 20 October 2024.



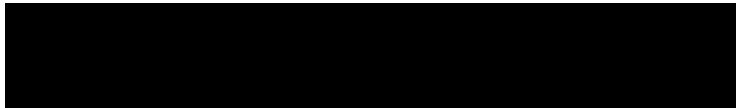
**GRANTED**  
**9 MAY 2025**

The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined.

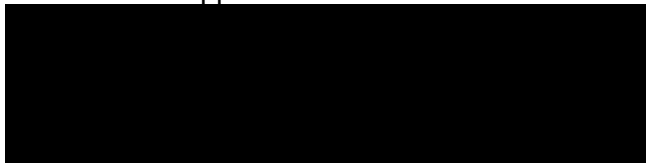
Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



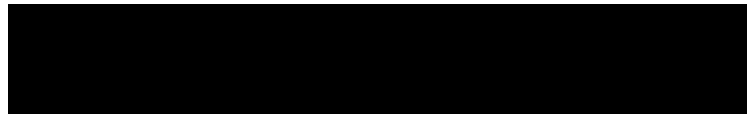
FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**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 7 May 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division



**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.	)	
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E. R. CAREY,</b>	)	No. ACM S32806
United States Air Force,	)	
<i>Appellant.</i>	)	8 May 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.



v.  
JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 8 May 2025.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel





The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



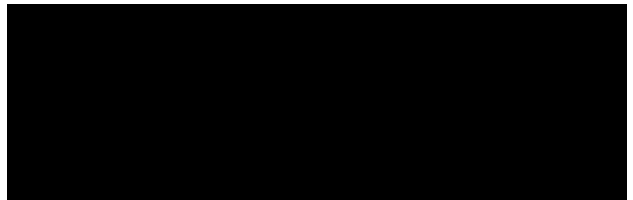
**CERTIFICATE OF FILING AND SERVICE**

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 5 June 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



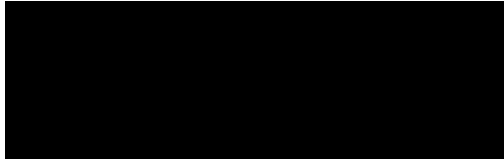
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E. R. CAREY,</b>	)	No. ACM S32806
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	5 June 2025

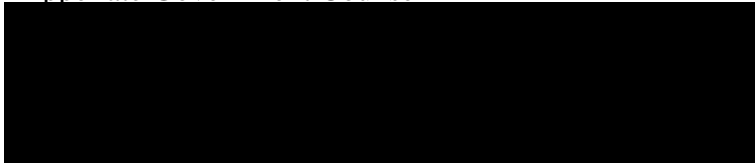
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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.

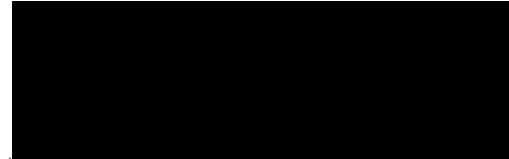


JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel

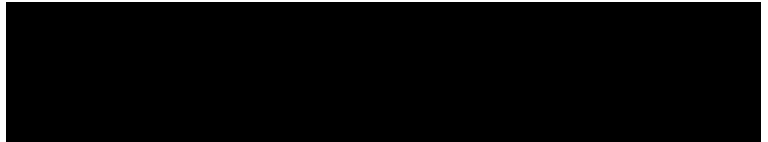


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 June 2025.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	<b>APPELLANT’S MOTION FOR</b>
	)	<b>ENLARGEMENT OF TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	8 July 2025
<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 a fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **14 August 2025**. The record of trial was docketed with this Court on 16 January 2025. From the date of docketing to the present date, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 1 October 2024, a special court-martial consisting of a military judge alone at Joint Base Elmendorf-Richardson, Alaska, found Appellant guilty, consistent with his pleas, of one charge and one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 251; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 5 November 2024. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen days, and a bad-conduct discharge. R. at 289; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Conv

2024



y Decision on Action – *United States v. Amn David E. R. Carey*, 20 October

**GRANTED**

**9 JULY 2025**

The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing forty-two clients; twenty-five clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, one client has an upcoming supplement to the petition for grant of review and another client has a pending answer brief, both before the United States Court of Appeals for the Armed Forces (CAAF). Twelve matters currently have priority over this case:

- 1) *United States v. York*, ACM 40604 – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, thirty-six appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 2) *United States v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF – The record of trial is eight volumes consisting of 11 prosecution exhibits, nine defense exhibits, one court exhibit, and 71 appellate exhibits; the transcript is 703 pages. Undersigned counsel is reviewing the Government's Brief in Support of the Certified Issue and preparing to draft an answer brief in this case.

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<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a seven-page AOE in *U.S. v. Keilberg*, ACM 40601; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF; reviewed the Government's answer and prepared and filed a two-page reply brief in *U.S. v. Haymond*, ACM 40588; reviewed the Government's answer and prepared and filed an eight-page reply brief in *U.S. v. Driskill*, ACM 39889 (rem); and prepared and filed a motion to withdraw from appellate review in *U.S. v. Harnar*, ACM 40559 (f rev). Additionally, counsel was off for the Juneteenth and Independence Day holidays.

- 3) *United States v. Jackson*, ACM S32780 – The record of trial is five volumes consisting of twelve prosecution exhibits, thirteen defense exhibits, five appellate exhibits, and one court exhibit; the transcript is 122 pages. Undersigned counsel has begun reviewing the record of trial, and additional counsel has been detailed to this case.
- 4) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Undersigned counsel has begun reviewing the record of trial, and additional counsel has been detailed to this case.
- 5) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 6) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 8) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate

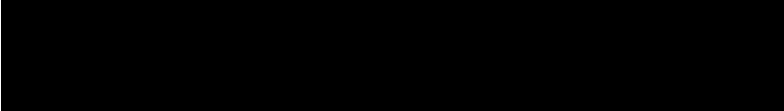
- exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 9) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 10) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 11) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 12) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits, and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal, was provided an update of the status of counsel's progress

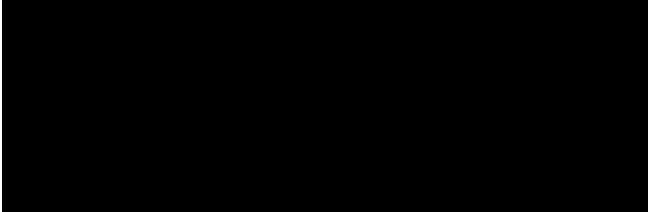
on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

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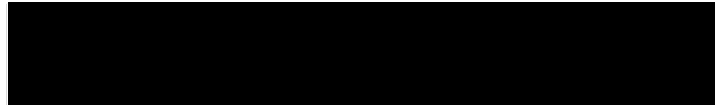
FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel

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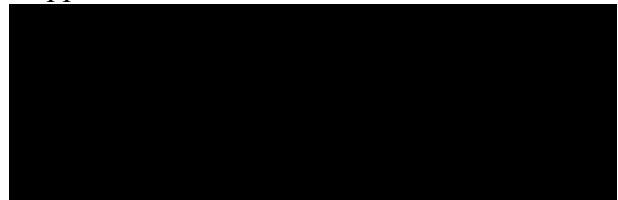
**CERTIFICATE OF FILING AND SERVICE**

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 8 July 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



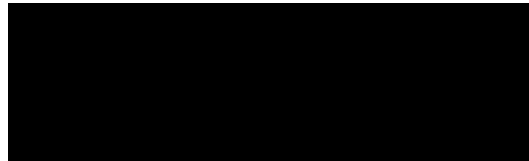
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E.-R. CAREY,</b>	)	No. ACM S32806
United States Air Force,	)	
<i>Appellant.</i>	)	8 July 2025

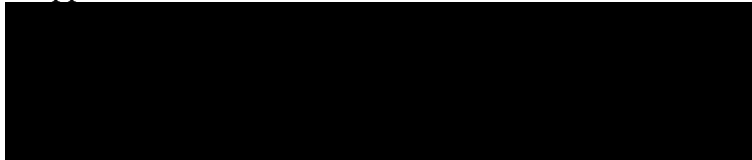
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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.

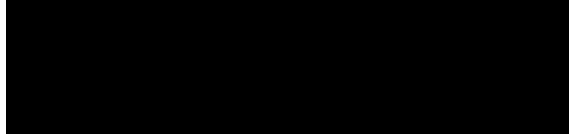


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

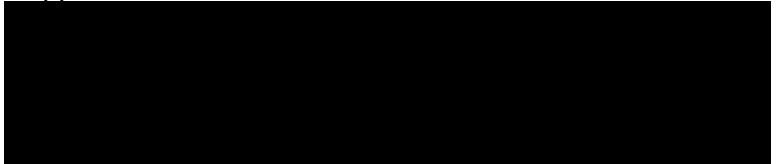


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 8 July 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	<b>APPELLANT’S MOTION FOR</b>
	)	<b>ENLARGEMENT OF TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	6 August 2025
	)	
<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 a fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **13 September 2025**. The record of trial was docketed with this Court on 16 January 2025. From the date of docketing to the present date, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 1 October 2024, a special court-martial consisting of a military judge alone at Joint Base Elmendorf-Richardson, Alaska, found Appellant guilty, consistent with his pleas, of one charge and one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 251; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 5 November 2024. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen days, and a bad-conduct discharge. R. at 289; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Amn David E. R. Carey*, 20 October



**GRANTED**

**11 AUG 2025**

The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; nineteen clients are pending initial AOE's before this Court.<sup>1</sup> Nine matters currently have priority over this case:

- 1) *United States v. Smith*, ACM 40437 (f rev) – The record of trial is four volumes consisting of seven prosecution exhibits, ten defense exhibits, and twenty-nine appellate exhibits; the transcript is 338 pages. Additional counsel has been detailed to this case and is drafting the AOE.
- 2) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel is completing his review of the record of trial and drafting the AOE in this case.
- 3) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has begun reviewing the record of trial in this case.

---

<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a sixteen-page supplement to the petition for grant of review to the United States Court of Appeals for the Armed Forces (CAAF) in *U.S. v. York*, ACM 40604, USCA Dkt. No. 25-0200/AF; prepared and filed an eleven-page answer brief to the CAAF in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; prepared and filed a nine-page answer to the Government's petition for reconsideration before the CAAF in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; and began drafting the AOE in *U.S. v. Banks*, ACM 24057. Additionally, counsel was on leave on 17–20 July and 1–5 August 2025.

- 4) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 5) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 6) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 8) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 9) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits,

and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



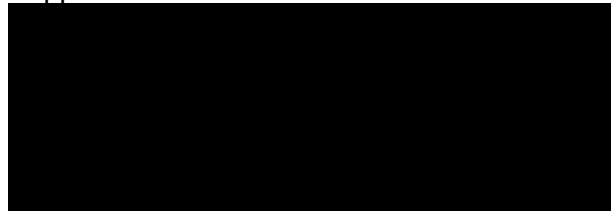
**CERTIFICATE OF FILING AND SERVICE**

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 August 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



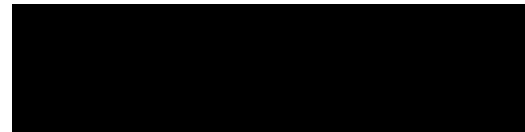
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E.R. CAREY,</b>	)	No. ACM S32806
United States Air Force,	)	
<i>Appellant.</i>	)	8 August 2025

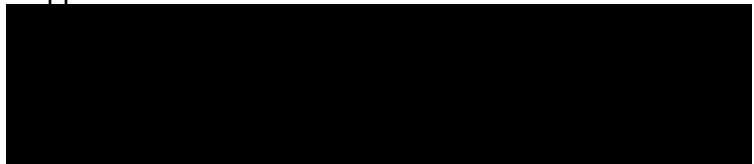
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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.

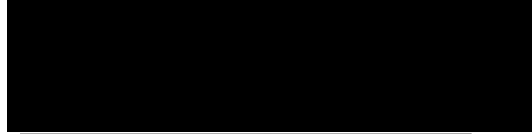


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

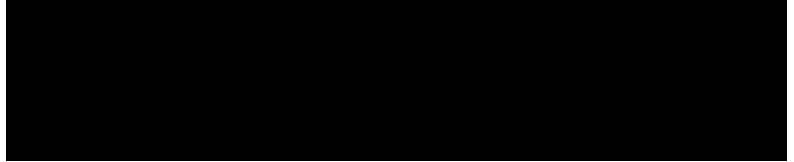


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 8 August 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel





The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; fifteen clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, one client has an upcoming petition for grant of review and supplement to the petition before the United States Court of Appeals for the Armed Forces (CAAF). Five additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Nine matters currently have priority over this case:

- 1) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel is reviewing the record of trial in this case.
- 2) *United States v. Payton*, ACM 40669 – The record of trial is five volumes consisting of three prosecution exhibits, five defense exhibits, and three appellate exhibits; the transcript is 175 pages. Undersigned counsel has reviewed the record of trial in this

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<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a six-page motion for summary disposition to the CAAF in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; completed his review of the seven-volume record of trial and prepared and filed a 24-page AOE in *U.S. v. Banks*, ACM 24057; prepared and filed a six-page reply in *U.S. v. Keilberg*, ACM 40601; prepared and filed a four-page motion for leave to file motion for remand and motion for remand as well as a six-page motion for reconsideration with suggestion for *en banc* consideration in *U.S. v. Payton*, ACM 40669; and began reviewing the record of trial in *U.S. v. Simmons*, ACM 40658. Additionally, counsel was on leave on 22–25 August 2025, was off for the Labor Day holiday, and attended the virtual preliminary hearing officer/legal advisor course on 3–4 September 2025.

- case and filed a motion for reconsideration of the denial of a motion for remand in this case.
- 3) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF – The record of trial is nine volumes consisting of 14 prosecution exhibits, 16 defense exhibits, one court exhibit, and 47 appellate exhibits; the transcript is 896 pages. Undersigned counsel is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
  - 4) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven appellate exhibits, and one court exhibit; the transcript is 773 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
  - 5) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
  - 6) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
  - 7) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

- 8) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 9) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits, and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

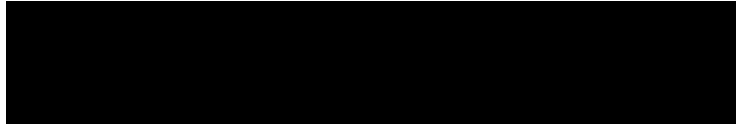
Respectfully submitted,

  
FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel  

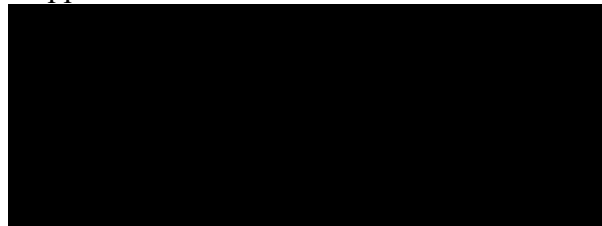

**CERTIFICATE OF FILING AND SERVICE**

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 4 September 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



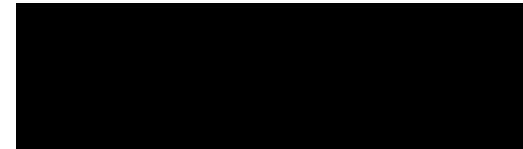
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E.R. CAREY,</b>	)	No. ACM S32806
United States Air Force,	)	
<i>Appellant.</i>	)	5 September 2025

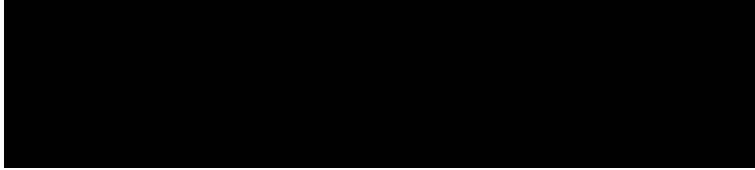
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



**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 September 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel





The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; twelve clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, two clients have pending supplements to petitions for a grant of review, and one additional client has an upcoming petition for grant of review and supplement to the petition, all before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Ten matters currently have priority over this case:

- 1) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/AF – ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
- 2) *United States v. Soloshenko*, ACM 40581 – The electronic record of trial is two volumes consisting of seven prosecution exhibits, two defense exhibits, twenty-seven

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<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a motion to withdraw from appellate review in *U.S. v. Payton*, ACM 40669; completed his review of the four-volume record of trial and prepared and filed a four-page AOE in *U.S. v. Simmons*, ACM 40658; prepared and filed a two-page motion for oral argument in *U.S. v. Casillas*, ACM 40551; reviewed and edited a 45-page petition for a writ of certiorari in *Dawson v. U.S.*, ACM 24041, USCA Dkt. No. 25-0156/AF; filed a petition for grant of review and began drafting the supplement to the petition in *U.S. v. Soloshenko*, ACM 40581, USCA Dkt. No. 25-0273/SF; filed an application for an extension of time to file a petition for a writ of certiorari in *Schneider, et al. v. U.S.*; and participated in three practice oral arguments for two additional cases. Additionally, counsel was on leave on 12 and 16 September 2025 and attended the Joint Appellate Advocacy Training on 25–26 September 2025.

- appellate exhibits, and one court exhibit; the transcript is 773 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 3) *United States v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF – The record of trial is three volumes consisting of two prosecution exhibits, three defense exhibits, and seventeen appellate exhibits; the transcript is 299 pages. Undersigned counsel was recently detailed to this case and is preparing a supplement to the petition for grant of review.
  - 4) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF – The record of trial is nine volumes consisting of 14 prosecution exhibits, 16 defense exhibits, one court exhibit, and 47 appellate exhibits; the transcript is 896 pages. Undersigned counsel is drafting a brief on remand in this case.
  - 5) *United States v. Casillas*, ACM 40499 (f rev) – The record of trial is 14 volumes consisting of 37 prosecution exhibits, three defense exhibits, one court exhibit, and 170 appellate exhibits; the transcript is 1,957 pages. Undersigned counsel is reviewing the record of trial in this case.
  - 6) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.
  - 7) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and

- one court exhibit; the transcript is 243 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 8) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 9) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 10) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits, and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

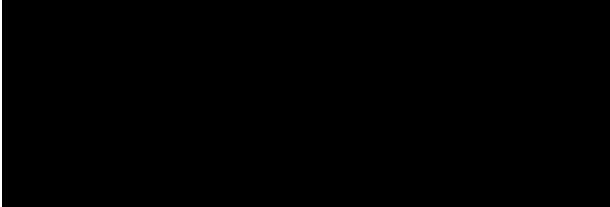
Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was informed of his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



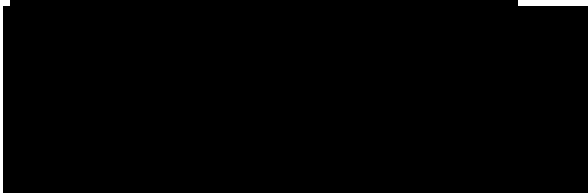
**CERTIFICATE OF FILING AND SERVICE**

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 October 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel

A large black rectangular redaction box covering contact information, likely a phone number and email address.

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

<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E.R. CAREY,</b>	)	No. ACM S32806
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	6 October 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 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 year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not yet begun reviewing 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.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

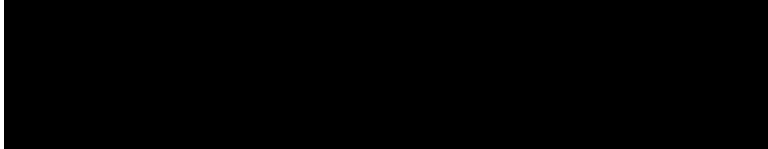


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 6 October 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel





The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; twelve clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, three clients have upcoming petitions for grant of review and supplements to the petitions, and another client has an upcoming oral argument, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Twelve matters currently have priority over this case:

- 1) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel is drafting a reply to the Government's answer in this case.
- 2) *United States v. Mims*, ACM S32799 – The electronic record of trial is one volume consisting of three prosecution exhibits, six defense exhibits, and five appellate

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<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a sixteen-page supplement to the petition for grant of review to the CAAF in *U.S. v. Soloshenko*, ACM 40581, USCA Dkt. No. 25-0273/SF; reviewed the record and prepared and filed a four-page supplement to the petition for grant of review to the CAAF in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; filed an application for an extension of time to file a petition for a writ of certiorari in *Zhong v. U.S.*, ACM 40354, USCA Dkt. No. 24-0146/AF; prepared and filed a six-page brief on remand in *U.S. v. Navarro Aguirre*, ACM 40354 (rem); began reviewing the record of trial in *U.S. v. Polly*, ACM 40709; prepared and filed a seven-page reply to the Government's motion for reconsideration in *U.S. v. Casillas*, ACM 40551; began drafting a reply to the Government's answer in *U.S. v. Banks*, ACM 24057; and participated in ten practice oral arguments for five additional cases. Additionally, counsel was off for the Columbus Day holiday and was on leave on 24–26 October 2025.

- exhibits; the transcript is 103 pages. Undersigned counsel has not yet begun reviewing the record of trial, but additional counsel has been detailed to this case.
- 3) *United States v. Polly*, ACM 40709 – The record of trial is seven volumes consisting of four prosecution exhibits, one defense exhibit, eighty-two appellate exhibits, and one court exhibit; the transcript is 243 pages. Undersigned counsel has begun reviewing the record of trial in this case.
  - 4) *United States v. Zhong*, ACM 40354, USCA Dkt. No. 24-0146/AF – ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
  - 5) *United States v. Casillas*, ACM 40499 (f rev) – The record of trial is 14 volumes consisting of 37 prosecution exhibits, three defense exhibits, one court exhibit, and 170 appellate exhibits; the transcript is 1,957 pages. Undersigned counsel is reviewing the record of trial in this case.
  - 6) *United States v. Haymond*, ACM 40588 – The record of trial is seven volumes consisting of five prosecution exhibits, seven defense exhibits, 42 appellate exhibits, and one court exhibit; the transcript is 689 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
  - 7) *United States v. Simmons*, ACM 40658 – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

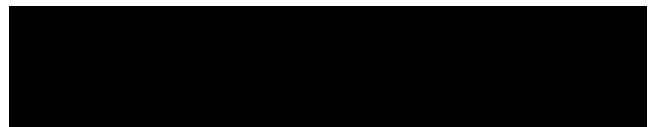
- 8) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 9) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 10) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 11) *United States v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF – The record of trial is eight volumes consisting of 11 prosecution exhibits, nine defense exhibits, one court exhibit, and 71 appellate exhibits; the transcript is 703 pages. Undersigned counsel is preparing to present oral argument to the CAAF as lead counsel in this case on 13 January 2026.
- 12) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits, and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel

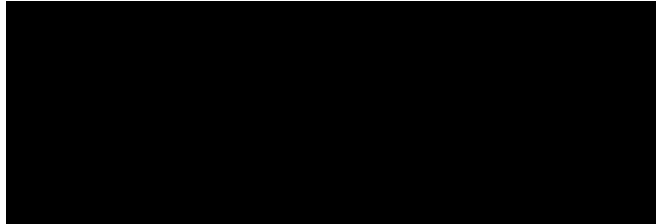
to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel

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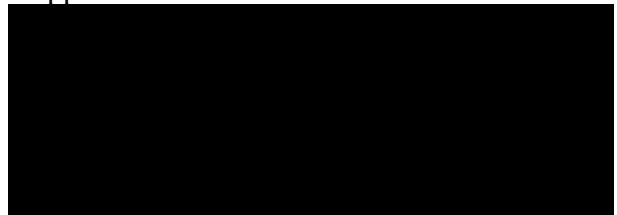
**CERTIFICATE OF FILING AND SERVICE**

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 4 November 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



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

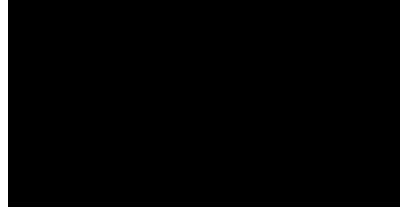
<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E.R. CAREY,</b>	)	
United States Air Force,	)	No. ACM S32806
<i>Appellant.</i>	)	
	)	6 November 2025
	)	

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

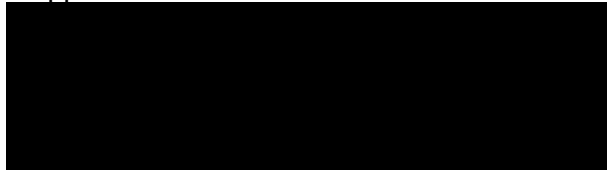
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

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 330 days in length. Appellant’s nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not yet reviewed the record at this late stage in the process.

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

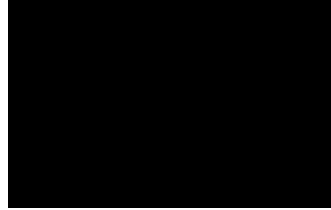


KATE E. LEE, Maj, USAF  
Appellate Government Counsel

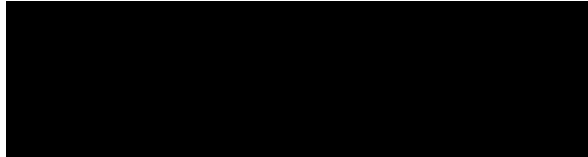


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 6 November 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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

UNITED STATES <i>Appellee</i>	)	No. ACM S32806
	)	
v.	)	
	)	<b>ORDER</b>
David E. CAREY Airman (E-2) U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 4 December 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

The court has considered Appellant’s motion, the Government’s opposition, case law, and this court’s Rules of Practice and Procedure. Accordingly, it is by the court on this 8th day of December, 2025,

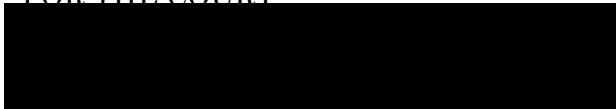
**ORDERED:**

Appellant’s Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **11 January 2026**.

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



FOR THE COURT



JACOB B. HOEFERKAMP, Capt, USAF  
Chief 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 (NINTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	4 December 2025
<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 a ninth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **11 January 2026**. The record of trial was docketed with this Court on 16 January 2025. From the date of docketing to the present date, 322 days have elapsed. On the date requested, 360 days will have elapsed.

On 1 October 2024, a special court-martial consisting of a military judge alone at Joint Base Elmendorf-Richardson, Alaska, found Appellant guilty, consistent with his pleas, of one charge and one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 251; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 5 November 2024. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen days, and a bad-conduct discharge. R. at 289; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Amn David E. R. Carey*, 20 October 2024.

The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing thirty-three clients; ten clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, six clients have upcoming petitions for grant of review and/or supplements to the petitions, and another client has an upcoming oral argument, all before the United States Court of Appeals for the Armed Forces (CAAF). Four additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Eleven matters currently have priority over this case:

- 1) *United States v. Zhong*, ACM 40411, USCA Dkt. No. 25-0011/AF – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court exhibit; the transcript is 482 pages. Undersigned counsel has drafted a petition for a writ of certiorari to the Supreme Court of the United States in this case.

---

<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a four-page reply to the Government's answer to the supplement to the petition for grant of review to the CAAF in *U.S. v. Adams*, ACM 22018, USCA Dkt. No. 25-0270/AF; completed his review of the seven-volume record of trial and prepared and filed a three-page AOE in *U.S. v. Polly*, ACM 40709; prepared and filed a fourteen-page reply to the Government's answer in *U.S. v. Banks*, ACM 24057; petitioned the CAAF for a grant of review and prepared and filed a six-page supplement to the petition in *U.S. v. Haymond*, ACM 40588, USCA Dkt. No. 26-0035/AF; drafted a thirty-seven-page petition for a writ of certiorari in *Zhong v. U.S.*, ACM 40354, USCA Dkt. No. 24-0146/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Simmons*, ACM 40658, USCA Dkt. No. 26-0049/AF; began reviewing the ten-volume record of trial in *U.S. v. Gossett*, ACM 40715; and participated in four practice oral arguments for two additional cases. Additionally, counsel was off for the Veterans Day holiday and was on leave on 22–29 November 2025, a period that included the Thanksgiving holiday.

- 2) *United States v. Simmons*, ACM 40658, USCA Dkt. No. 26-0049/AF – The record of trial is four volumes consisting of five prosecution exhibits, four defense exhibits, three court exhibits, and thirty-eight appellate exhibits; the transcript is 248 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 3) *United States v. Keilberg*, ACM 40601 – The record of trial is four volumes consisting of thirteen prosecution exhibits, one defense exhibit, and seven appellate exhibits; the transcript is 118 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 4) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 5) *United States v. Martinez*, ACM 39903 – The record of trial is thirteen volumes consisting of eleven prosecution exhibits, twenty-four defense exhibits, and eighty-one appellate exhibits; the transcript is 1134 pages. Undersigned counsel was recently detailed to this case and is reviewing the record in preparation for petitioning the CAAF for a grant of review.
- 6) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

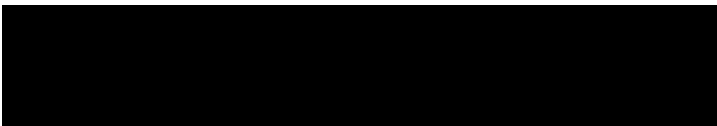
- 7) *United States v. Casillas*, ACM 40551 – The record of trial is ten volumes consisting of nineteen prosecution exhibits, four defense exhibits, and sixty-five appellate exhibits; the transcript is 1627 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 8) *United States v. Driskill*, ACM 39889 (rem) – The record of trial is fourteen volumes consisting of fourteen prosecution exhibits, four defense exhibits, and 169 appellate exhibits; the transcript is 2,062 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 9) *United States v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF – The record of trial is eight volumes consisting of 11 prosecution exhibits, nine defense exhibits, one court exhibit, and 71 appellate exhibits; the transcript is 703 pages. Undersigned counsel is preparing to present oral argument to the CAAF as lead counsel in this case on 13 January 2026.
- 10) *United States v. Casillas*, ACM 40499 (f rev) – The record of trial is 14 volumes consisting of 37 prosecution exhibits, three defense exhibits, one court exhibit, and 170 appellate exhibits; the transcript is 1,957 pages. Undersigned counsel is reviewing the record of trial in this case.
- 11) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits, and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel

to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

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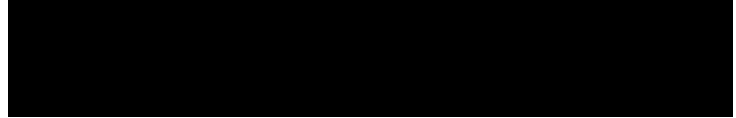
FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel

A solid black rectangular redaction box covering the contact information of Frederick J. Johnson.

**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 4 December 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



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

<b>UNITED STATES,</b>	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E.R. CAREY,</b>	)	
United States Air Force,	)	No. ACM S32806
<i>Appellant.</i>	)	
	)	8 December 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 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 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 reviewed the record at this late stage in the process.

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

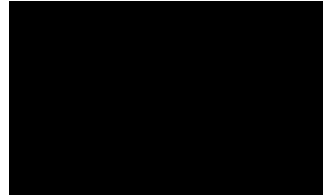


KATE E. LEE, Maj, USAF  
Appellate Government Counsel

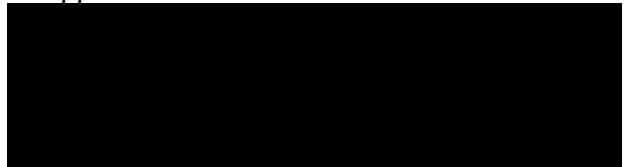


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 8 December 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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 (TENTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	31 December 2025
<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 a tenth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **10 February 2026**. The record of trial was docketed with this Court on 16 January 2025. From the date of docketing to the present date, 349 days have elapsed. On the date requested, 390 days will have elapsed.

On 1 October 2024, a special court-martial consisting of a military judge alone at Joint Base Elmendorf-Richardson, Alaska, found Appellant guilty, consistent with his pleas, of one charge and one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 251; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 5 November 2024. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen days, and a bad-conduct discharge. R. at 289; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Amn David E. R. Carey*, 20 October 2024.



**GRANTED**  
**6 JAN 2026**

The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing twenty-nine clients; ten clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, six clients have upcoming petitions for grant of review and/or supplements to the petitions, and two clients have upcoming oral arguments, all before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Ten matters currently have priority over this case:

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---

<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a thirty-seven-page petition for a writ of certiorari to the Supreme Court of the United States in *Zhong v. U.S.*, ACM 40354, USCA Dkt. No. 24-0146/AF; prepared and filed a five-page supplement to the petition for grant of review at the CAAF in *U.S. v. Simmons*, ACM 40658, USCA Dkt. No. 26-0049/AF; continued reviewing the ten-volume record of trial in *U.S. v. Gossett*, ACM 40715; petitioned the CAAF for a grant of review and drafted a ten-page supplement to the petition in *U.S. v. Keilberg*, ACM 40601, USCA Dkt. No. 26-0065/AF; prepared and filed an application for extension of time to file a petition for a writ of certiorari at the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF; conducted a practice oral argument for *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; and participated in two practice oral arguments for two additional cases. Additionally, counsel was TDY on 11–12 December 2025 and was off for the Christmas holiday.

- 2) *United States v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF – The record of trial is thirteen volumes consisting of eleven prosecution exhibits, twenty-four defense exhibits, and eighty-one appellate exhibits; the transcript is 1134 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.
- 3) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel is reviewing the record of trial in this case.
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- 7) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 8) *Sherman v. United States*, ACM 40486, USCA Dkt. No. 25-0209/AF – The record of trial is five volumes consisting of seventeen prosecution exhibits, twelve defense exhibits, one court exhibit, and twenty-five appellate exhibits; the transcript is 469 pages. Undersigned counsel is preparing to petition the Supreme Court of the United States for a writ of certiorari in this case.
- 9) *United States v. Casillas*, ACM 40499 (f rev) – The record of trial is 14 volumes consisting of 37 prosecution exhibits, three defense exhibits, one court exhibit, and 170 appellate exhibits; the transcript is 1,957 pages. Undersigned counsel is reviewing the record of trial in this case.
- 10) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits, and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

On 12 March 2025, this Court issued an order stating that “any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.” Order, *United States v. Carey*, No. ACM S32806 (A.F. Ct. Crim. App. Mar. 12, 2025). Since this motion for enlargement of time, if granted, would expire 390 days after docketing, exceptional circumstances must be shown in accordance with the Court’s order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But, as can be seen by the Declaration of the Appellate Defense Division's Deputy Chief, he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. *See Decl.* at 1-6. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. *Id.* at 1-4. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. *Id.* Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. *Id.* All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme

Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. *Id.* at 5-6. Underscoring these demands, six of the ten higher priority matters noted above are pending before the CAAF or the Supreme Court. Relative to the CAAF and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. Decl. at 5-6. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. *Id.* at 6. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. *Id.* at 6. One civilian has been permanently provided, starting work on 16 December 2024. *Id.* at 1, 6. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. *Id.* at 6. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel. *Id.*

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has previously resulted in the detailing of additional

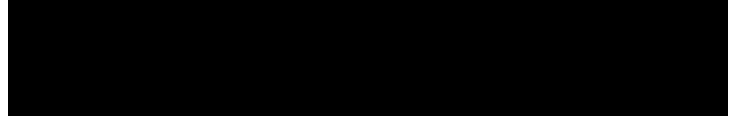
counsel to cases prioritized above this one, which helped expedite undersigned counsel's progress toward reviewing this case. However, no additional counsel has been identified for this case.

Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

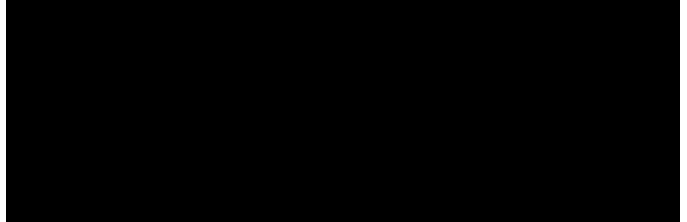
Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



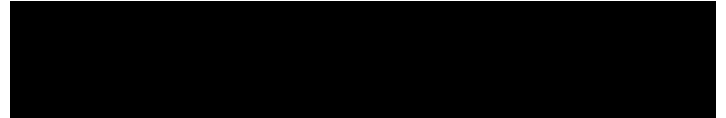
FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



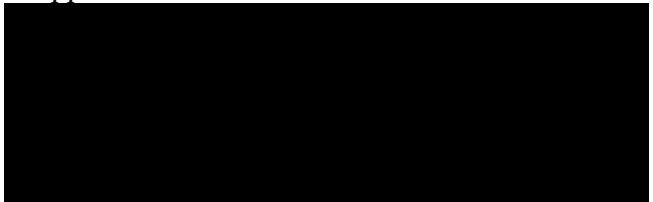
**CERTIFICATE OF FILING AND SERVICE**

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 31 December 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



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

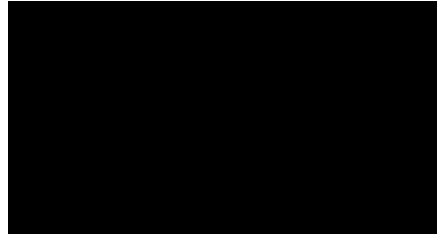
<b>UNITED STATES,</b>	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman (E-2)	)	Before Panel No. 2
<b>DAVID E.R. CAREY,</b>	)	
United States Air Force,	)	No. ACM S32806
<i>Appellant.</i>	)	
	)	5 January 2026
	)	

**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 over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not started review of the record of trial at this late stage of the appellate process.

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

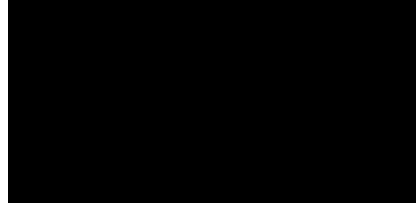


KATE E. LEE, Maj, USAF  
Appellate Government Counsel



**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 January 2026.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION TO ATTACH</b>
<i>Appellee,</i>	)	<b>A DOCUMENT</b>
	)	
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	
<i>Appellant.</i>	)	31 December 2025

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

Pursuant to Rule 23(b) of the Joint Rules of Appellate Procedure, effective 17 May 2024, and Rule 23.3(b) of this Court’s Rules of Practice and Procedure, effective 23 December 2020, Appellant hereby moves to attach the Declaration at the Appendix to the Record of Trial.

The two governing rules set out above describe different standards, but the end-result under both should be to grant this motion. The Joint Rules require “good cause shown.” JT. CT. CRIM. APP. R. 23(b). This Court’s rules must be consistent with the Joint Rules. JT. CT. CRIM. APP. R. 3; *United States v. Gilley*, 59 M.J. 245, 247 (C.A.A.F. 2004). This Court’s rules require a statement concerning the relevance and necessity of the proposed item. A.F. CT. CRIM. APP. R. 23.3(b).

There is good cause to attach the proposed declaration because it is relevant and necessary to resolving Appellant’s Motion for Enlargement of Time (Tenth), which requires a showing of exceptional circumstances in accordance with this Court’s previous order. Order, *United States v. Carey*, No. ACM S32806 (A.F. Ct. Crim. App. Mar. 12, 2025). In at least one order, this Court suggested that “established evidence of government-caused staff shortages in the Appellate Defen

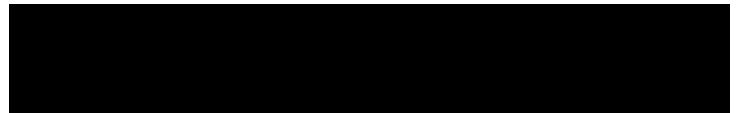


was needed to show why “routine workload” supports a motion for an

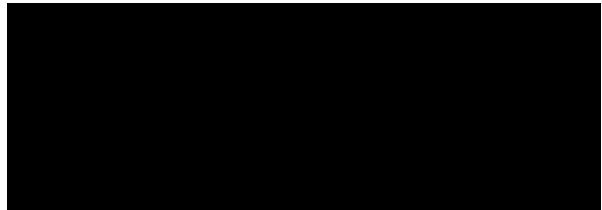
enlargement of time to file an appellant's initial assignments of error. Order at 2 n.3, *United States v. Evangelista*, No. ACM 40531 (A.F. Ct. Crim. App. Dec. 6, 2024). The proposed document provides that evidence.

As such, the proposed document is relevant and necessary, and there is good cause to grant this motion to attach a document.

Respectfully Submitted,



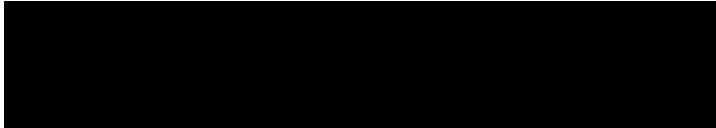
FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



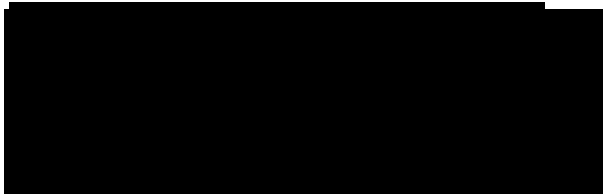
Counsel for Appellant

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing and the Appendix were delivered by e-mail to the Court and served on the Government Trial and Appellate Operations Division on 31 December 2025.



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel





The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing twenty-eight clients; ten clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, two clients have upcoming petitions for grant of review and/or supplements to the petitions before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have upcoming petitions for a writ of certiorari before the Supreme Court of the United States. Seven matters currently have priority over this case:

- 1) *United States v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF – The record of trial is nine volumes consisting of fourteen prosecution exhibits, sixteen defense exhibits, one court exhibit, and forty-seven appellate exhibits; the transcript is

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<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel continued reviewing the ten-volume record of trial and prepared and filed a consent motion to examine sealed materials in *U.S. v. Gossett*, ACM 40715; prepared and filed a ten-page supplement to the petition for grant of review to the CAAF in *U.S. v. Keilberg*, ACM 40601, USCA Dkt. No. 26-0065/AF; prepared and filed a twenty-one-page supplement to the petition for grant of review to the CAAF in *U.S. v. Martinez*, ACM 39903, USCA Dkt. No. 26-0073/AF; conducted two practice oral arguments and presented oral argument before the CAAF as lead counsel in *U.S. v. Kershaw*, ACM 40455, USCA Dkt. No. 25-0177/AF; petitioned the CAAF for a grant of review and prepared and filed a fourteen-page supplement to the petition in *U.S. v. Casillas*, ACM 40551, USCA Dkt. No. 26-0092/AF; petitioned the CAAF for a grant of review and prepared and filed a twenty-eight-page supplement to the petition in *U.S. v. Driskill*, ACM 39889, USCA Dkt. No. 26-0087/AF; petitioned the CAAF for a grant of review and began drafting the supplement to the petition in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF; began drafting a petition for a writ of certiorari to the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; prepared and filed an application for extension of time to file a petition for a writ of certiorari at the Supreme Court of the United States in *Soloshenko, et al. v. United States*; and participated in five practice oral arguments for two additional cases. Additionally, counsel was off for the New Year's Day and Birthday of Martin Luther King, Jr. holidays.

896 pages. Undersigned counsel has petitioned the CAAF for a grant of review and is drafting the supplement to the petition in this case.

- 2) *Sherman v. United States*, ACM 40486, USCA Dkt. No. 25-0209/AF – The record of trial is five volumes consisting of seventeen prosecution exhibits, twelve defense exhibits, one court exhibit, and twenty-five appellate exhibits; the transcript is 469 pages. Undersigned counsel is drafting a petition for a writ of certiorari to the Supreme Court of the United States in this case.
- 3) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy appellate exhibits; the transcript is 1076 pages. Undersigned counsel is reviewing the record of trial in this case.
- 4) *United States v. Banks*, ACM 24057 – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.
- 5) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 6) *United States v. Casillas*, ACM 40499 (f rev) – The record of trial is 14 volumes consisting of 37 prosecution exhibits, three defense exhibits, one court exhibit, and 170 appellate exhibits; the transcript is 1,957 pages. Undersigned counsel is reviewing the record of trial in this case.

7) *United States v. Her*, ACM 40747 – The electronic record of trial is eleven volumes consisting of eleven prosecution exhibits, fourteen defense exhibits, two court exhibits, and sixty-seven appellate exhibits; the transcript is 961 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

On 12 March 2025, this Court issued an order stating that “any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.” Order, *United States v. Carey*, No. ACM S32806 (A.F. Ct. Crim. App. Mar. 12, 2025). Since this motion for enlargement of time, if granted, would expire 420 days after docketing, exceptional circumstances must be shown in accordance with the Court’s order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. The crux of these workload issues is that the Appellate Defense Division’s workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division’s counsel are greater in today’s cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each

eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. Underscoring these demands, three of the seven higher priority matters noted above are pending before the CAAF or the Supreme Court. Relative to the CAAF and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. One civilian has been permanently provided, starting work on 16 December 2024. The Division gained one additional active-duty counsel in 2025, but it is unclear whether

that is intended as a permanent additional billet. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel.

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has previously resulted in the detailing of additional counsel to cases prioritized above this one, which helped expedite undersigned counsel's progress toward reviewing this case. However, no additional counsel has been identified for this case.

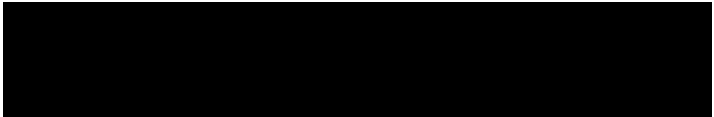
Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors.

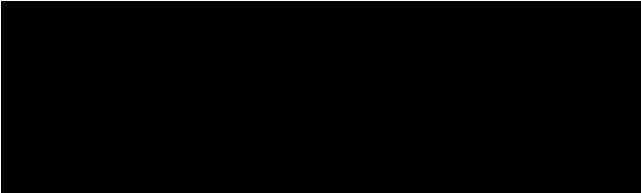
Appellant was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A solid black rectangular redaction box covering the signature of Frederick J. Johnson.

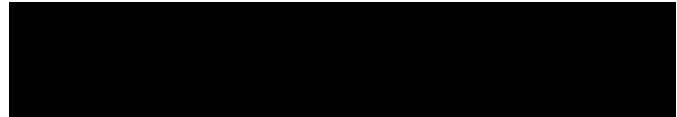
FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel

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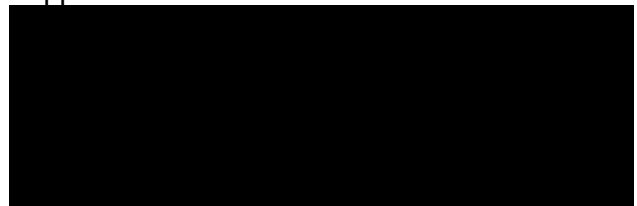
**CERTIFICATE OF FILING AND SERVICE**

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 February 2026.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



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

<b>UNITED STATES,</b>	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Airman (E-2)	)	
<b>DAVID E.R. CAREY,</b>	)	No. ACM S32806
United States Air Force.	)	
<i>Appellant</i>	)	4 February 2026

**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 over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 420 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 4 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not started review of the record of trial at this late stage of the appellate process.

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

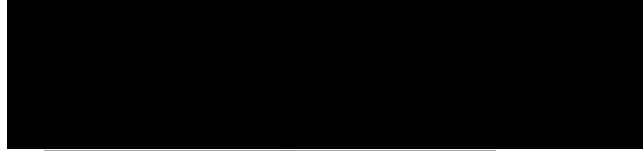


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

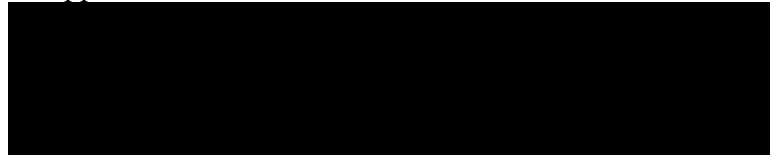


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 4 February 2026.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES</b>	)	<b>No. ACM S32806</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>David E. R. CAREY</b>	)	
<b>Airman (E-2)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 3 March 2026, counsel for Appellant submitted a Motion for Enlargement of Time (Twelfth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposed the motion and noted that “[i]f Appellant’s new delay request is granted, the defense delay in this case will be 450 days in length.”

On 6 March 2026, the court held a status conference to discuss the progress of this case. Appellant was represented by Major Frederick J. Johnson; Lieutenant Colonel Allen S. Abrams from the Appellate Defense Division was also present. Major Vanessa Bairos represented the Government. In response to questions from the court, Major Johnson indicated he had not reviewed this record of trial and had six matters that still had priority over Appellant’s case. Based on his workload, Major Johnson did not anticipate reviewing this case until May 2026.

During this status conference, we emphasized the need to “ensure the timely progress of cases reviewed under Article 66.” *United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). We requested the Appellate Defense Division explore all options to include detailing other counsel to take on this case. The Government has continued to maintain its opposition to further enlargements of time.

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 March, 2026,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (Twelfth) is **GRANTED**. Appellant shall file any assignments of error not later than **11 April 2026**.

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



A  
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 (TWELFTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2)	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	3 March 2026
<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 a twelfth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of thirty days, which will end on **11 April 2026**. The record of trial was docketed with this Court on 16 January 2025. From the date of docketing to the present date, 411 days have elapsed. On the date requested, 450 days will have elapsed.

On 1 October 2024, a special court-martial consisting of a military judge alone at Joint Base Elmendorf-Richardson, Alaska, found Appellant guilty, consistent with his pleas, of one charge and one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. R. at 251; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 5 November 2024. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, confinement for fifteen days, and a bad-conduct discharge. R. at 289; EOJ. The convening authority took no action on the findings or sentence. ROT Vol. 1, Convening Authority Decision on Action – *United States v. Amn David E. R. Carey*, 20 October 2024.

The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing twenty-seven clients; ten clients are pending initial AOE's before this Court.<sup>1</sup> Additionally, one client has an upcoming supplement to the petition for grant of review, and another client has an upcoming answer brief, both before the United States Court of Appeals for the Armed Forces (CAAF). Three additional clients have an upcoming consolidated petition for a writ of certiorari before the Supreme Court of the United States. Six matters currently have priority over this case:

- 1) *United States v. Banks*, ACM 24057, USCA Dkt. No. 26-0127/AF – The record of trial is seven volumes consisting of ten prosecution exhibits, sixteen defense exhibits, and thirty appellate exhibits; the transcript is 985 pages. Undersigned counsel has petitioned the CAAF for a grant of review and drafted the supplement to the petition in this case.
- 2) *United States v. Gossett*, ACM 40715 – The record of trial is ten volumes consisting of seven prosecution exhibits, seven defense exhibits, one court exhibit, and seventy

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<sup>1</sup> Since the filing of Appellant's last request for an enlargement of time, counsel continued reviewing the ten-volume record of trial in *U.S. v. Gossett*, ACM 40715; drafted a two-page reply to the Government's answer to the supplement to the petition for grant of review in *U.S. v. Casillas*, ACM 40551, USCA Dkt. No. 26-0092/AF; prepared and filed an eight-page supplement to the petition for grant of review in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 26-0100/AF; prepared and filed a twenty-one-page petition for a writ of certiorari to the Supreme Court of the United States in *Sherman v. U.S.*, ACM 40486, USCA Dkt. No. 25-0209/AF; petitioned the CAAF for a grant of review and drafted a seventeen-page supplement to the petition in *U.S. v. Banks*, ACM 24057, USCA Dkt. No. 26-0127/AF; and participated in nine practice oral arguments for four additional cases. Additionally, counsel was on leave on 6 February 2026 and was off for the Washington's Birthday holiday.

- appellate exhibits; the transcript is 1076 pages. Undersigned counsel is reviewing the record of trial in this case.
- 3) *United States v. Casillas*, ACM 40551, USCA Dkt. No. 26-0096/AF – The record of trial is ten volumes consisting of nineteen prosecution exhibits, four defense exhibits, and sixty-five appellate exhibits; the transcript is 1627 pages. Undersigned counsel is drafting an answer brief to the CAAF on the certified issues in this case.
  - 4) *Soloshenko, et al. v. United States* – This petition for a writ of certiorari to the Supreme Court of the United States consolidates five cases that are all seeking certiorari for the same issue. Undersigned counsel is the counsel of record for this consolidated petition.
  - 5) *United States v. Penninga*, ACM 40714 – The electronic record of trial is three volumes consisting of sixteen prosecution exhibits, three defense exhibits, one court exhibit, and seventy-three appellate exhibits; the transcript is 822 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
  - 6) *United States v. Casillas*, ACM 40499 (f rev) – The record of trial is 14 volumes consisting of 37 prosecution exhibits, three defense exhibits, one court exhibit, and 170 appellate exhibits; the transcript is 1,957 pages. Undersigned counsel is reviewing the record of trial in this case.

On 12 March 2025, this Court issued an order stating that “any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.” Order, *United States v. Carey*, No. ACM S32806 (A.F. Ct. Crim. App. Mar. 12, 2025). Since this motion for enlargement of time, if granted, would expire 450 days after docketing, exceptional circumstances must be shown in accordance with the Court’s order.

Undersigned counsel is willing to gain the necessary familiarity with the record to submit assignments of error prior to the filing deadline, and his limited progress so far is not a deliberate tactical decision to create an appellate issue. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008). But he is impeded in doing so for reasons that amount to staffing shortages and, in turn, high workload demands on undersigned counsel. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately only forty percent of this pool of clients. Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. Underscoring

these demands, three of the six higher priority matters noted above are pending before the CAAF or the Supreme Court. Relative to the CAAF and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. Multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. Also in 2023, the Appellate Defense Division requested eight additional active-duty personnel. One civilian has been permanently provided, starting work on 16 December 2024. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel.

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has resulted in the detailing of additional counsel to cases prioritized above this one, which has helped expedite undersigned counsel's progress toward reviewing this case. However, no additional counsel has been identified for this case.

Having been tasked with doing substantially more work with the same resources, undersigned counsel's docket is such that the ordinary workload precludes—and has precluded—undersigned counsel from finalizing review and briefing of Appellant's case. This is despite undersigned counsel regularly working at night, on weekends, and while on leave. The workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



**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 March 2026.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



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

<b>UNITED STATES,</b>	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Airman (E-2)	)	
<b>DAVID E.R. CAREY,</b>	)	No. ACM S32806
United States Air Force.	)	
<i>Appellant</i>	)	4 March 2026

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

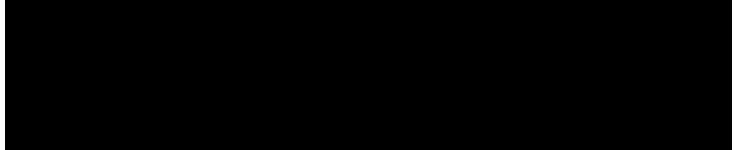
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 450 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed more than two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 3 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant’s counsel has not started review of the record of trial at this late stage of the appellate process.

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

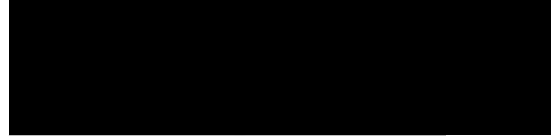


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

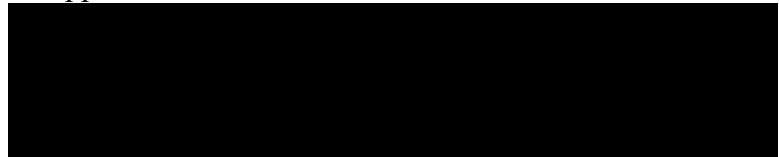


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 4 March 2026.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel





The electronic record of trial is five volumes consisting of seven prosecution exhibits, six defense exhibits, and thirty-seven appellate exhibits; the transcript is 294 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case, but anticipates completing her review the week of 5 April 2026.

Undersigned counsel, Major Jordan Grande, was detailed to this case today, 1 April 2026. She anticipates, based on her docket, being able to review Appellant's case and file any Assignment of Error before the original detailed appellate defense counsel, Major Frederick Johnson, would be able to do so. Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), Maj Grande also provides the following information: Maj Grande is currently assigned seventeen cases; eleven cases are pending before this Court (two cases are pending AOE's, including Appellant's case). Two cases have priority over the present case.

- 1) *United States v. Fundis*, USCA Dkt. No. 26-0165-AF/ACM 40689 – The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Appellant is currently confined. Undersigned counsel is drafting the Supplement to the Petition for Review in this case, which is due to the CAAF by 21 April 2026.
- 2) *United States v. Pryce*, ACM 25014, – The E-ROT is one volume and consists of eight Prosecution Exhibits, fourteen Defense Exhibits, and twenty-one Appellate Exhibits; the transcript is 442 pages. Appellant is not currently confined. Undersigned counsel is finalizing the AOE in this case, which will be filed by 3 April 2026.

Major Frederick Johnson remains detailed to this case but will file a motion to withdraw as appellate defense counsel. While he remains detailed to this case, it is anticipated that his

priorities will not have an impact on Appellant's case, as he will be imminently withdrawing and Maj Grande will be detailed appellate defense counsel on Appellant's case.

On 12 March 2025, this Court issued an order stating that "any future requests for an enlargement of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances." Order, *United States v. Carey*, No. ACM S32806 (A.F. Ct. Crim. App. Mar. 12, 2025). Since this motion for enlargement of time, if granted, would expire 450 days after docketing, exceptional circumstances must be shown in accordance with the Court's order.

The Appellate Defense Division has reviewed the dockets of its appellate defense counsel and has detailed Maj Grande to Appellant's case to ensure an earlier review of Appellant's case. Maj Grande was detailed to Appellant's case today and anticipates completing her review of Appellant's case by the week of 5 April 2026. She does not anticipate requesting an additional EOT. Prior to Maj Grande's detailing, Maj Johnson was impeded in completing his review of Appellant's case for reasons that amount to staffing shortages and, in turn, high workload demands on counsel. The crux of these workload issues is that the Appellate Defense Division's workload is up, but its staff to carry out that work remains largely unchanged.

The Appellate Defense Division has the highest volume of cases pending initial briefing before this Court since 2017, but the demands on the Division's counsel are greater in today's cases because records of trial now are between twenty-five and thirty-five percent longer than those of 2017, based solely on their transcript pages. The demand placed by this heightened amount of review per case has been compounded by a higher volume of clients, with the 2022 broadening of direct appeals in Article 65 requiring record-review and consultation for each eligible client, and with those direct appeals docketed with this Court amounting to approximately

only forty percent of this pool of clients. Over this same time since the December 2022 law change, the Appellate Defense Division faced a high volume of cases before the CAAF, a high volume of interlocutory appeals and writ-petitions, and multiple time-sensitive petitions to the Supreme Court of the United States. All three of these classes of cases are particularly impactful on an attorney's ability to work cases before this Court because of the timelines involved, with interlocutory appeals taking priority and with cases appealed to the CAAF and the Supreme Court subject to strict timeline requirements. 10 U.S.C. §§ 806b(e)(3)(B), 862(b), 867(b); 28 U.S.C. § 2101(c). The workload demands before the Supreme Court are only increasing, with every appellant seeking review at the CAAF now eligible to petition the Supreme Court. Underscoring these demands, three of the six higher priority matters noted above are pending before the CAAF or the Supreme Court. Relative to the CAAF and the Supreme Court, this Court has substantially greater flexibility to adjust its deadlines and should do so here. *Compare United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006) (setting eighteen months post-docketing with the Court of Criminal Appeals as a trigger for analysis but declining to make it dispositive in light of the possibility of reasonable delay), *with* 10 U.S.C. 867(b), 28 U.S.C. § 2101(c).

Good cause for granting this motion is even more evident in light of the Appellate Defense Division's multi-faceted efforts to mitigate its workload strain. In Appellant's case specifically, the Appellate Defense Division leadership detailed Maj Grande to his case after reviewing Maj Grande's docket and determining that Appellant's case would be reviewed sooner by virtue of her detailing.

In general, multiple long-term absences were filled through support by reservists trained for and experienced in appellate practice. In 2023, the Appellate Defense Division sought a legislative change to alleviate its workload but was unsuccessful. Also in 2023, the Appellate

Defense Division requested eight additional active-duty personnel. One civilian has been permanently provided, starting work on 16 December 2024. The Division gained one additional active-duty counsel in 2025, but it is unclear whether that is intended as a permanent additional billet. In 2024, the Appellate Defense Division again requested eight additional active-duty personnel.

As noted in *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998), there is no substitute for the briefing by appellate defense counsel on behalf of an individual appellant, even considering this Court's broad mandate for independent review. Undersigned counsel regularly and continually examines his docket, in concert with supervisory counsel within the Appellate Defense Division, to assess the possibility of assigning additional counsel to expedite review of his cases. This regular assessment of dockets has resulted in the detailing of additional counsel to cases prioritized above this one, which has helped expedite undersigned counsel's progress toward reviewing this case. However, no additional counsel has been identified for this case.

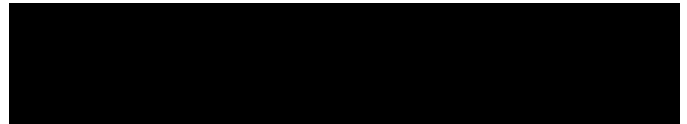
The workload of Air Force appellate defense counsel is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See Roach*, 66 M.J. at 418; *Moreno*, 63 M.J. at 137. The circumstances described here are exceptional, but not because they are new or previously unknown. They are exceptional because they demonstrate a task saturation brought about by numerous duties that often have conflicting timelines. These duties necessitate difficult prioritizations that have resulted in the requests for enlargements of time throughout the life of Appellant's case.

Crucially, the delay in reviewing Appellant's record necessitated by the prioritization of other matters is *through no fault of Appellant*. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors.

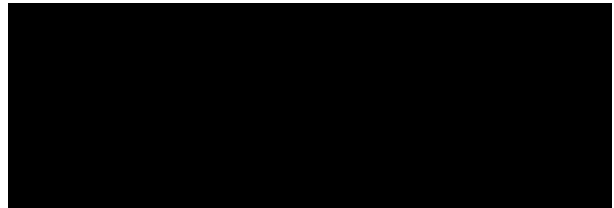
Appellant was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

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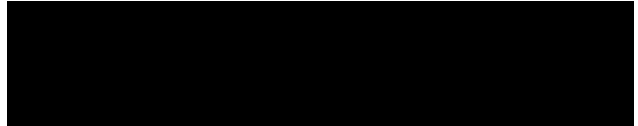
JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

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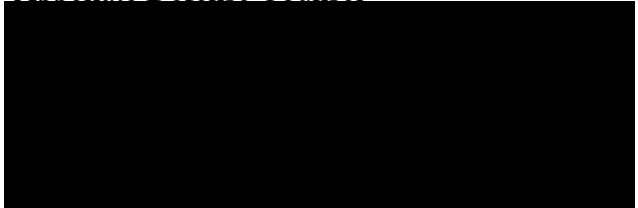
**CERTIFICATE OF FILING AND SERVICE**

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 April 2026.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



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

<b>UNITED STATES,</b>	)	UNITED STATES’
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Airman (E-2)	)	
<b>DAVID E. R. CAREY,</b>	)	No. ACM S32806
United States Air Force.	)	
<i>Appellant</i>	)	2 April 2026

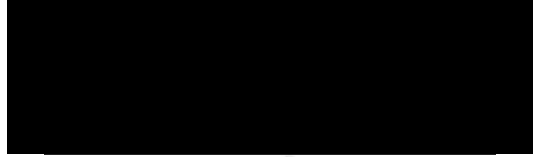
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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 over a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 480 days in length. Appellant’s over year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards.

Appellant has already consumed more than four-fifths of the 18-month standard for this Court to issue a decision, which only leaves about 2 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 reviewing 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.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

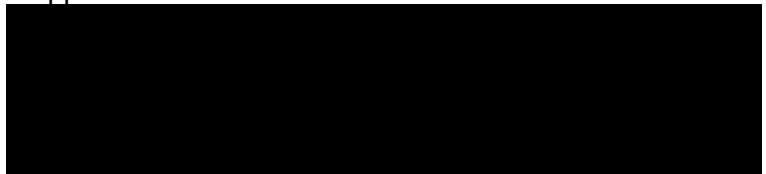


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 2 April 2026.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

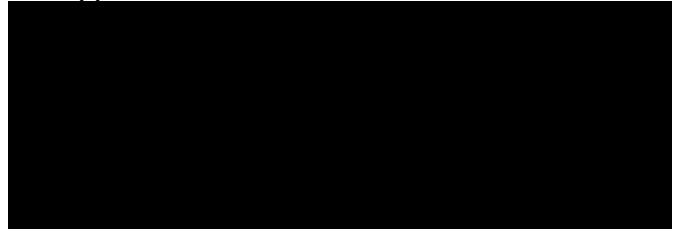




Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



**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 10 April 2026.

Respectfully Submitted,



FREDERICK J. JOHNSON, Maj, USAF  
Appellate Defense Counsel



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

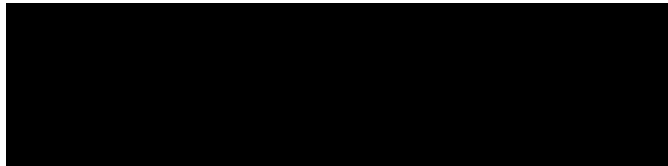
<b>UNITED STATES,</b>	)	<b>MERITS BRIEF</b>
<i>Appellee,</i>	)	
	)	
v.	)	Before Panel No. 2
	)	
Airman (E-2),	)	No. ACM S32806
<b>DAVID E. R. CAREY,</b>	)	
United States Air Force,	)	11 May 2026
<i>Appellant.</i>	)	

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

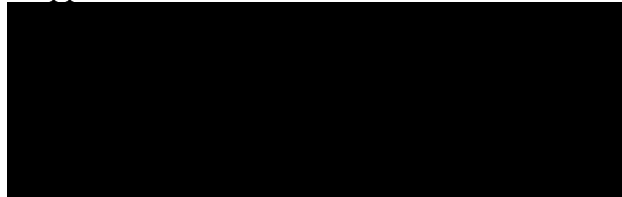
**Submission of Case Without Specific Assignments of Error**

The undersigned appellate defense counsel attests she has, on behalf of Airman David E. R. Carey, 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.

Respectfully submitted,



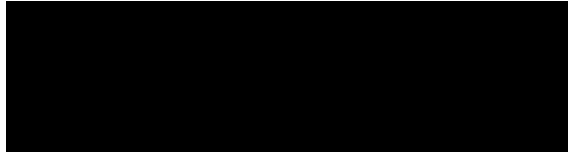
JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



**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 11 May 2026.

Respectfully submitted,

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Appellate Defense Counsel

A large black rectangular redaction box covering the name of the Appellate Defense Counsel.