

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

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Timothy D. HARNAR)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

Appellant's case was docketed with this court on 26 March 2024. On 15 May 2024 (49 days after docketing), 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, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 21st day of May, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **24 July 2024**.

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

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



FOR THE COURT



OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIRST)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	15 May 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(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 **24 July 2024**. The record of trial was docketed with this Court on 26 March 2024. 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
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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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 15 May 2024.

Respectfully submitted,

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

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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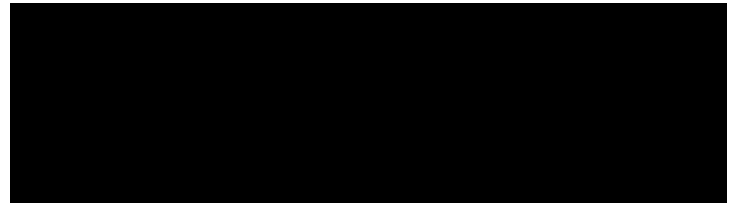
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

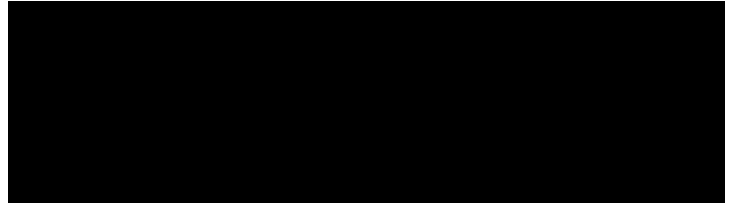
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 17 May 2024.



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


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

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF
Timothy D. HARNAR	)	DOCKETING
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>)	

The record of trial in the above-styled case was returned to this court on 26 March 2024 by the Military Appellate Records Branch (JAJM) for re-docketing with the court.*

Accordingly, it is by the court on this 22d day of May, 2024,
ORDERED:
That the Record of Trial in the above styled matter is referred to Panel 3.



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

* This notice was delayed due to an administrative oversight.

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SECOND)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	12 July 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (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 30 days, which will end on **23 August 2024**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.


On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, dated 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 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 timely appeal, was not provided an update of the status of counsel's progress on Appellant's case since his last request for an enlargement of time, 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,




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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 12 July 2024.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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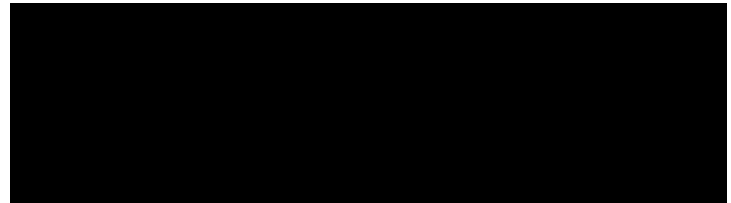
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

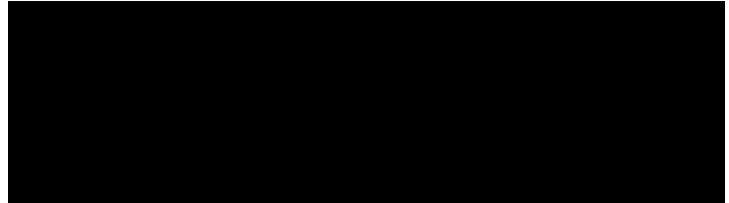
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 15 July 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (THIRD)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	15 August 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 September 2024**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 142 days have elapsed. On the date requested, 180 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), dated 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, dated 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 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 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,




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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 15 August 2024.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF
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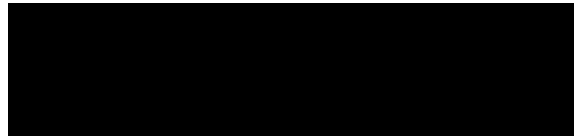
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

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



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 19 August 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FOURTH)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	12 September 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 October 2024**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 170 days have elapsed. On the date requested, 210 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Appellant is not currently confined.

Counsel is currently representing 24 clients; 15 clients are pending initial AOE's before this Court.¹ Eight matters currently have priority over this case:

- 1) *United States v. Casillas*, ACM 40499 – 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 has reviewed approximately seventy-five percent of the record of trial in this case.
- 2) *United States v. Taylor*, ACM 40371 – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is reviewing this Court's opinion and preparing for a potential petition for grant of review to the United States Court of Appeals for the Armed Forces (CAAF) in this case.
- 3) *United States v. Rodgers*, ACM 40528 – The record of trial is eight volumes consisting of three prosecution exhibits, one defense exhibit, and 39 appellate exhibits; the transcript is 199 pages. Undersigned counsel has begun reviewing the record of trial in this case.
- 4) *United States v. Zhong*, ACM 40411 – The record of trial is four volumes consisting of 14 prosecution exhibits, 11 defense exhibits, 12 appellate exhibits, and one court

¹ Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately seventy percent of the 14-volume record of trial and prepared and filed a motion for remand in *U.S. v. Casillas*, ACM 40499 and reviewed all prosecution and defense exhibits as well as two appellate exhibits in the eight-volume record of trial in *U.S. v. Rodgers*, ACM 40528. Additionally, counsel was off for the Labor Day holiday.

exhibit; the transcript is 482 pages. Undersigned counsel is reviewing this Court's opinion and preparing for a potential petition for grant of review to the CAAF in this case.


- 5) *United States v. Henderson*, ACM 40419 – The record of trial is five volumes consisting of ten prosecution exhibits, 21 defense exhibits, two court exhibits, and 25 appellate exhibits; the transcript is 937 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 6) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *United States v. York*, ACM 40604 – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, 36 appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 8) *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 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 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,



FREDERICK J. JOHNSON, Maj, USAF
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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 12 September 2024.

Respectfully submitted,

[REDACTED]

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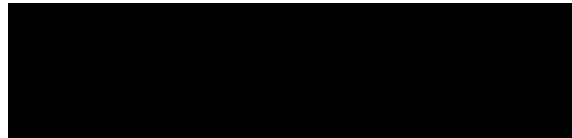
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

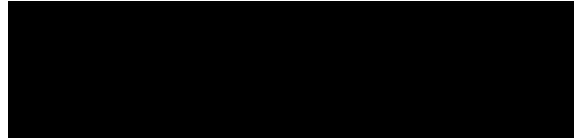
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 13 September 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (FIFTH)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	12 October 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a fifth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **21 November 2024**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 200 days have elapsed. On the date requested, 240 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Appellant is not currently confined.

Counsel is currently representing 27 clients; 14 clients are pending initial AOE's before this Court.¹ Seven matters currently have priority over this case:

- 1) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel has petitioned the CAAF for grant of review and drafted a supplement to the petition in this case.
- 2) *United States v. Zhong*, ACM 40411 – 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 CAAF for a grant of review in this case.
- 3) *United States v. Myers*, ACM S32749 – The record of trial is four volumes consisting of seven prosecution exhibits, nine defense exhibits, and 26 appellate exhibits; the transcript is 656 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel completed his review of the eight-volume record of trial and prepared and filed a merits brief in *U.S. v. Rodgers*, ACM 40528; petitioned the United States Court of Appeals for the Armed Forces (CAAF) for a grant of review and drafted a 27-page supplement to the petition in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; prepared and filed an eight-page supplemental reply brief in *U.S. v. Doroteo*, ACM 40363; and reviewed approximately five percent of the 14-volume record of trial in *U.S. v. Casillas*, ACM 40499. Additionally, counsel was on leave on 13 and 17–25 September 2024 and attended the Joint Appellate Advocacy Training on 26–27 September 2024.

- 4) *United States v. Henderson*, ACM 40419 – The record of trial is five volumes consisting of ten prosecution exhibits, 21 defense exhibits, two court exhibits, and 25 appellate exhibits; the transcript is 937 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 5) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 6) *United States v. York*, ACM 40604 – The record of trial is seven volumes consisting of five prosecution exhibits, two defense exhibits, 36 appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 7) *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 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 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,

A solid black rectangular box used to redact the signature of Frederick J. Johnson.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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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 12 October 2024.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF

Appellate Defense Counsel

Air Force Appellate Defense Division

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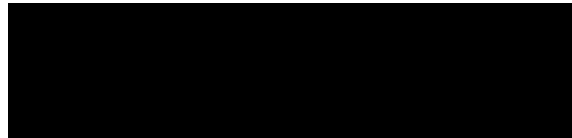
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

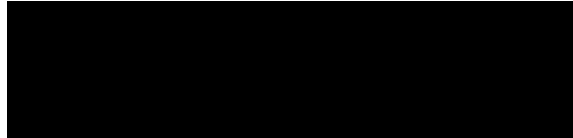
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 16 October 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SIXTH)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	13 November 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a sixth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **21 December 2024**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 232 days have elapsed. On the date requested, 270 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 29 clients; 16 clients are pending initial AOE's before this Court. Additionally, one client has a pending brief before the United States Court of Appeals for the Armed Forces (CAAF).¹ Five 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, 36 appellate exhibits, and one court exhibit; the transcript is 847 pages. Undersigned counsel has reviewed approximately thirty-five percent of the record of trial in this case. The AOE in this case is currently due on 19 November 2024, and because this Court denied the appellant's fifth request for an enlargement of time, undersigned counsel must prepare and file the AOE by that date.


¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a 27-page supplement to the petition for grant of review to the CAAF in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; petitioned the CAAF for a grant of review and prepared and filed a 31-page supplement to the petition in *U.S. v. Zhong*, ACM 40411, USCA Dkt. No. 25-0011/AF; petitioned the CAAF for a grant of review and prepared and filed a 20-page supplement to the petition in *U.S. v. Myers*, ACM S32749, USCA Dkt. No. 25-0012/AF; prepared and filed a 15-page reply brief in *U.S. v. Cadavona*, ACM 40476; prepared and filed a thirteen-page brief on behalf of appellant following redocketing in *U.S. v. Kershaw*, ACM 40455; reviewed approximately ninety percent of the five-volume record of trial in *U.S. v. Henderson*, ACM 40419; prepared and filed a five-page response to the Government's motion for reconsideration in *U.S. v. Patterson*, ACM 40426; reviewed approximately thirty-five percent of the seven-volume record of trial in *U.S. v. York*, ACM 40604; and participated in practice oral arguments for three additional cases. Additionally, counsel was off for the Columbus Day and Veterans Day holidays and was on leave on 18–20 October 2024.

- 2) *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 was recently detailed to this case and is now reviewing the record and drafting a grant brief to the CAAF.
- 3) *United States v. Henderson*, ACM 40419 – The record of trial is five volumes consisting of ten prosecution exhibits, 21 defense exhibits, two court exhibits, and 25 appellate exhibits; the transcript is 937 pages. Undersigned counsel has reviewed approximately ninety percent of the record of trial in this case.
- 4) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.
- 5) *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 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 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,

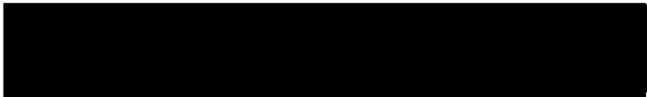


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CERTIFICATE OF FILING AND SERVICE

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 13 November 2024.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF
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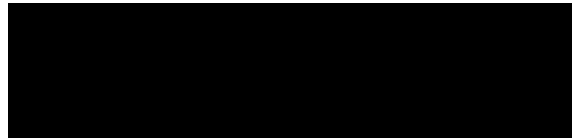
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

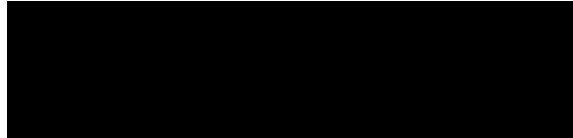
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 November 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (SEVENTH)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	12 December 2024
<i>Appellant.</i>)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for a seventh enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **20 January 2025**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 261 days have elapsed. On the date requested, 300 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 30 clients; 16 clients are pending initial AOE's before this Court. Additionally, one client has a pending brief before the United States Court of Appeals for the Armed Forces (CAAF).¹ Five matters currently have priority over this case:

- 1) *United States v. Henderson*, ACM 40419 – The record of trial is five volumes consisting of ten prosecution exhibits, 21 defense exhibits, two court exhibits, and 25 appellate exhibits; the transcript is 937 pages. Undersigned counsel has completed his review of the record of trial and drafted the AOE in this case.
- 2) *United States v. Manriquez*, ACM 40527 – The record of trial is five volumes consisting of three prosecution exhibits, one defense exhibits, 19 appellate exhibits, and two court exhibits; the transcript is 129 pages. Undersigned counsel is reviewing two issues specified by this Court for additional briefing in this case.
- 3) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense

¹ 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 before the CAAF in *U.S. v. Zhong*, ACM 40411, USCA Dkt. No. 25-0011/AF; completed his review of the five-volume record of trial and drafted a 17-page AOE in *U.S. v. Henderson*, ACM 40419; reviewed approximately 65 percent of the seven-volume record of trial and prepared and filed a 45-page brief on behalf of appellant in *U.S. v. York*, ACM 40604; sat as second chair for outreach oral argument before this Court in *U.S. v. Menard*, ACM 40496; prepared and filed a 35-page grant brief to the CAAF in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; and participated in practice oral arguments for one additional case. Additionally, counsel was off for the Thanksgiving holiday.

exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is drafting a grant brief to the CAAF in this case.

4) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has not yet begun reviewing the record of trial in this case.

5) *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 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 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,

A large black rectangular redaction box covering the signature area.

FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
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Office: (240) 612-4770
Email: frederick.johnson.11@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 12 December 2024.

Respectfully submitted,

A large black rectangular redaction box covering the signature area.

FREDERICK J. JOHNSON, Maj, USAF

Appellate Defense Counsel

Air Force Appellate Defense Division

1500 West Perimeter Road, Suite 1100

Joint Base Andrews NAF, MD 20762-6604

Office: (240) 612-4770

Email: frederick.johnson.11@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time 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 one year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not started review of the record of trial at this late stage of the appellate process.

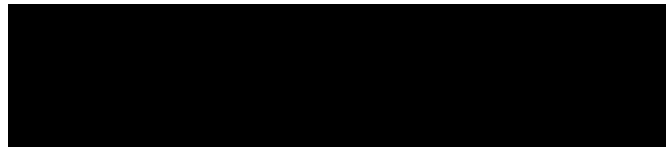
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 16 December 2024.



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

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

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Timothy D. HARNAR)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 12 January 2025, Appellant filed a Motion for Enlargement of Time (Eighth), requesting an additional 30 days in which to file his assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, prior filings and rulings in this case, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 15th day of January, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Eighth) is **GRANTED**. Appellant shall file any assignments of error not later than **19 February 2025**.

Additional motions for enlargement of time may necessitate a status conference.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (EIGHTH)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	12 January 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 an eighth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **19 February 2025**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 292 days have elapsed. On the date requested, 330 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 30 clients; 18 clients are pending initial AOE's before this Court. Additionally, one client has a pending reply brief before the United States Court of Appeals for the Armed Forces (CAAF).¹ Three matters currently have priority over this case:

- 1) *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 reviewing the Government's answer and drafting a reply brief to the CAAF in this case.
- 2) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has reviewed approximately 30 percent of the record of trial in this case.


¹ Since the filing of Appellant's last request for an enlargement of time, counsel prepared and filed a 17-page AOE in *U.S. v. Henderson*, ACM 40419; prepared and submitted a two-page bullet background paper in response to the Government's request for The Judge Advocate General to certify the record to the CAAF in *U.S. v. Patterson*, ACM 40426; prepared and filed a motion to withdraw from appellate review in *U.S. v. Manriquez*, ACM 40527; prepared and filed a 26-page grant brief to the CAAF in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; reviewed approximately 30 percent of the eight-volume record of trial in *U.S. v. Burkhardt-Bauder*, ACM 24011; and participated in practice oral arguments for two additional cases. Additionally, counsel was on leave on 24–29 December 2024 and was off for the New Year's Day holiday and the National Day of Mourning for President Carter's state funeral.

3) *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 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 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 eighth enlargement of time for good cause shown.

Respectfully submitted,




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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 12 January 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time 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 one 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 completed review of the record of trial at this late stage of the appellate process.

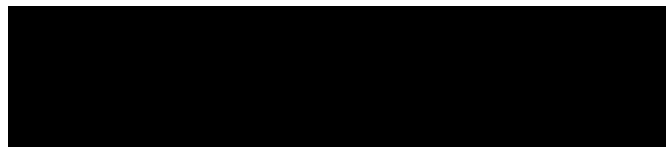
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 14 January 2025.



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

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

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Timothy D. HARNAR)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 9 February 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.

On 18 February 2025, 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. Lieutenant Colonel Jenny A. Liabenow represented the Government. In response to questions from the court, Major Johnson provided updates and additional details regarding other obligations impacting his ability to review Appellant’s case and prepare his assignments of error. Along with the other information he provided, Major Johnson stated that while it was not listed in Appellant’s motion, in March 2025 he expected to prepare a petition for grant of review and supplement for the United States Court of Appeals for the Armed Forces for *United States v. Cadavona*. Major Johnson indicated the Defense was likely to submit at least one additional motion for enlargement of time in Appellant’s case, and offered that he may be able to submit Appellant’s assignments of error in April 2025. Lieutenant Colonel Liabenow reiterated the Government’s opposition to Appellant’s motion but did not specifically challenge any written or oral representations by the Defense.

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

Accordingly, it is by the court on this 18th day of February, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **21 March 2025**.



FOR THE COURT



OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (NINTH)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	9 February 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 30 days, which will end on **21 March 2025**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 320 days have elapsed. On the date requested, 360 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, 14 defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 32 clients; 20 clients are pending initial AOE's before this Court. Additionally, two clients have pending briefs, and one other client has an upcoming oral argument before the United States Court of Appeals for the Armed Forces (CAAF).¹ Five matters currently have priority over this case:

- 1) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is drafting a reply brief to the CAAF in this case.
- 2) *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 present oral argument as lead counsel before the CAAF in this case on 26 February 2025.


¹ Since the filing of Appellant's last request for an enlargement of time, counsel reviewed approximately 50 percent of the eight-volume record of trial and prepared a motion to remand in *U.S. v. Burkhardt-Bauder*, ACM 24011; prepared and filed a 17-page reply brief to the CAAF in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; assisted with preparing and filing a 44-page AOE in *U.S. v. Dawson*, ACM 24041; prepared and filed a six-page reply brief in *U.S. v. Henderson*, ACM 40419; began reviewing the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; prepared and filed a seven-page reply brief in *U.S. v. York*, ACM 40604; began drafting a reply brief to the CAAF in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; and participated in practice oral arguments for one additional case. Additionally, counsel was off for the Birthday of Martin Luther King, Jr. holiday.

- 3) *United States v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF – The record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel is reviewing the Government’s brief and drafting an answer to the CAAF in this case.
- 4) *United States v. Burkhardt-Bauder*, ACM 24011 – The record of trial is eight volumes consisting of five prosecution exhibits, 19 defense exhibits, 53 appellate exhibits, and one court exhibit; the transcript is 957 pages. Undersigned counsel has reviewed approximately 80 percent of the record of trial in this case, including all non-sealed materials, and has filed a motion to remand for corrections to the record.
- 5) *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 has 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 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 ninth enlargement of time for good cause shown.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF
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Air Force Appellate Defense Division
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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 9 February 2025.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Staff Sergeant (E-5)	)	ACM 40559 (f rev)
TIMOTHY D. HARNAR, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time 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 one 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 yearlong 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 begun review of the record of trial at this late stage of the appellate process.

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



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 11 February 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	ENLARGEMENT OF TIME (TENTH)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	11 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)(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 **20 April 2025**. The record of trial was docketed with this Court on 26 March 2024. From the date of docketing to the present date, 350 days have elapsed. On the date requested, 390 days will have elapsed.

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to total forfeiture of pay and allowances, to be confined for ten months, and to be discharged from the service with a bad conduct discharge. R. at 106; EOJ. The convening authority took no action on the findings or the sentence but waived automatic forfeitures. ROT Vol. 1, Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

The record of trial is three volumes consisting of five prosecution exhibits, fourteen defense exhibits, six appellate exhibits, and two court exhibits; the transcript is 106 pages. Appellant is not currently confined. Undersigned counsel has not yet begun reviewing the record of trial in this case.

Counsel is currently representing 36 clients; 21 clients are pending initial AOE's before this Court. Additionally, two clients have upcoming oral arguments, and one additional client has an upcoming petition for a grant of review, all before the United States Court of Appeals for the Armed Forces (CAAF).¹ Four matters currently have priority over this case:

- 1) *United States v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF – The record of trial is six volumes consisting of six prosecution exhibits, one court exhibit, 12 defense exhibits, and 36 appellate exhibits; the transcript is 396 pages. Undersigned counsel is drafting a supplemental reply brief and preparing to present oral argument as lead counsel before the CAAF in this case on 19 March 2025.
- 2) *United States v. Cadavona*, ACM 40476 – The record of trial is four volumes consisting of 11 prosecution exhibits, two defense exhibits, and 24 appellate exhibits; the transcript is 329 pages. Undersigned counsel is preparing to petition the CAAF for a grant of review in this case.

¹ Since the filing of Appellant's last request for an enlargement of time, counsel conducted three practice oral arguments and presented oral argument as lead counsel before the CAAF in *U.S. v. Navarro Aguirre*, ACM 40354, USCA Dkt. No. 24-0146/AF; reviewed approximately 15 percent of the seven-volume record of trial in *U.S. v. Haymond*, ACM 40588; prepared and filed a 13-page reply brief to the CAAF and conducted a practice oral argument in *U.S. v. Taylor*, ACM 40371, USCA Dkt. No. 24-0234/AF; prepared and filed a 28-page answer to the CAAF in *U.S. v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF; and participated in ten practice oral arguments for four additional cases. Additionally, counsel was off for the Washington's Birthday holiday.

- 3) *United States v. Patterson*, ACM 40426, USCA Dkt. No. 25-0073/AF – The record of trial is 8 volumes consisting of 12 prosecution exhibits, eight defense exhibits, two court exhibits, and 75 appellate exhibits; the transcript is 987 pages. Undersigned counsel is preparing to present oral argument as lead counsel before the CAAF in this case on 9 April 2025.
- 4) *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 has reviewed approximately 20 percent of the record of trial in this case.

On 21 May 2024, 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. Harnar*, No. ACM 40559 (f rev) (A.F. Ct. Crim. App. May 21, 2024). 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 but, as can be seen by the Declaration of the Appellate Defense Division’s Deputy Chief, 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. Decl. at 5-6. Relative to the Court of Appeals for the Armed Forces 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. Assignment of one additional active-duty counsel is scheduled for 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, with action pending on that request. *Id.* As of the start of 2025, the Appellate Defense Division has an advertisement for long-term reserve support in an effort to move cases. *Id.*

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. That workload is to a degree that it may warrant scrutiny of what The Judge Advocate General is doing to ameliorate it. *See United States v. Roach*, 66 M.J. 410, 418 (C.A.A.F. 2008); *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 informed of his right to 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 tenth enlargement of time for good cause shown.

Respectfully submitted,



FREDERICK J. JOHNSON, Maj, USAF
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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 11 March 2025.

Respectfully submitted,

A large black rectangular redaction box covering the signature area.

FREDERICK J. JOHNSON, Maj, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	FOR ENLARGEMENT OF TIME
v.)	
	)	Before Panel No. 3
Staff Sergeant (E-5))	
TIMOTHY D. HARNAR	)	No. ACM 40559 (f rev)
United States Air Force,)	
<i>Appellant.</i>	)	13 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 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 one 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 yearlong 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 over 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 begun review of the record of trial at this late stage of the appellate process.

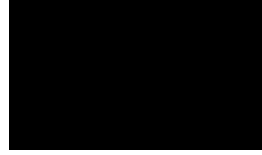
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 13 March 2025.



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

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

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Timothy D. HARNAR)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

Appellant’s case was docketed with this court on 26 March 2024. Pertinent to our evaluation of whether good cause exists for any future enlargements of time is the length of the record of trial and verbatim transcript in Appellant’s case. The verbatim transcript is 106 pages, and the record of trial is composed of only 3 volumes containing 5 prosecution exhibits, 14 defense exhibits, and 6 appellate exhibits, and 2 court exhibits, in a guilty plea, judge alone, plea agreement case. In the motion, Appellant’s counsel proffered that he “has not yet begun reviewing the record of trial in this case.”

On 11 March 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Tenth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion. This motion, if granted would expire 360 days after Appellant received the copy of the record of trial and verbatim transcript for his court-martial.

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

Accordingly, it is by the court on this 14th day of March, 2025,

ORDERED:

Appellant’s Motion for Enlargement of Time (Tenth) is **GRANTED**. Appellant shall file any assignments of error not later than **20 April 2025**.

Further requests by Appellant for enlargements of time will likely necessitate a status conference insofar as any future enlargements of time will involve Appellant filing his assignment of errors brief more than 360 days after receiving the 106-page verbatim transcript of his court-martial.



FOR THE COURT



OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	APPELLANT’S MOTION TO ATTACH
<i>Appellee,</i>	)	DOCUMENT
)	
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,)	
<i>Appellant.</i>	)	11 March 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. Harnar*, No. ACM 40559 (f rev) (A.F. Ct. Crim. App. May 21, 2024). In at least one order, this Court suggested that “established evidence of government-caused staff shortages in the Appellate Defense Division” 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,



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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 11 March 2025.



FREDERICK J. JOHNSON, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Timothy D. HARNAR)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 21 March 2025, counsel for Appellant submitted a Consent Motion to Examine Sealed Material, requesting both parties be allowed to examine Prosecution Exhibit 3 (a disk containing two video files). The exhibit was ordered sealed by the military judge. Appellant’s counsel avers counsel for the Government consents to this motion.

Appellate counsel may examine sealed material released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

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

Accordingly, it is by the court on this 24th day of March, 2025,

ORDERED:

Appellant’s Consent Motion to Examine Sealed Material is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **Prosecution Exhibit 3**, subject to the following conditions:

To view the sealed material, counsel will coordinate with the court.

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



FOR THE COURT



Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	CONSENT MOTION
<i>Appellee,</i>	)	TO EXAMINE SEALED
	)	MATERIALS
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	21 March 2025
<i>Appellant.</i>)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1, 23.1(b), and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, Appellant, Staff Sergeant Timothy D. Harnar, hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Prosecution Exhibit 3 in Appellant’s record of trial.

Facts

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. At trial, the Government introduced Prosecution Exhibit 3, a disk containing two video files, and the Court admitted it without objection. R. at 63–64. The military judge ordered this exhibit sealed. R. at 64; App. Ex. VI.

Law

Appellate counsel may examine materials presented or reviewed at trial and sealed, as well as materials reviewed *in camera*, released to trial or defense counsel, and sealed, upon a

colorable showing to the appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the UCMJ, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct. R.C.M. 1113(b)(3)(B)(i).

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide "competent representation," perform "reasonable diligence," and to "give a client his or her best professional evaluation of the questions that might be presented on appeal...[to] consider all issues that might affect the validity of the judgment of conviction and sentence...[to] advise on the probable outcome of a challenge to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance." Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b) (11 December 2018). These requirements are consistent with those imposed by the state bar to which counsel belongs.¹

This Court may grant relief "on the basis of the entire record" of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel so detailed by The Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. This Court's "broad mandate to review the record unconstrained by appellant's assignments of error" does not reduce "the importance of adequate representation" by counsel; "independent review is not the same as competent appellate representation." *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

¹ Counsel of record is licensed to practice law in Georgia.

Analysis

The sealed material is one prosecution exhibit, which was “presented” and “reviewed” by the parties at trial. R.C.M. 1113(b)(3)(B)(i). It is reasonably necessary for Appellant’s counsel to review this sealed material for counsel to competently conduct a professional evaluation of Appellant’s case and uncover all issues which might afford him relief. Because examination of the materials in question is reasonably necessary to the fulfillment of counsel’s Article 70, UCMJ duties, and because the material was available to the parties at trial, Appellant has provided the “colorable showing” required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel’s examination of this sealed material and has shown good cause to grant this motion.

The Government consents to both parties examining the sealed material detailed above.

WHEREFORE, Appellant respectfully requests this Honorable Court grant this motion and permit examination of the aforementioned sealed material contained within the original record of trial.

Respectfully submitted,

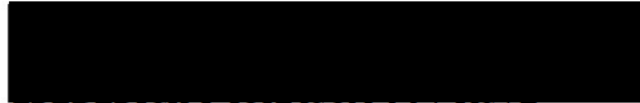


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CERTIFICATE OF FILING AND SERVICE

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 21 March 2025.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Frederick J. Johnson.

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

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Timothy D. HARNAR)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 3 April 2025, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials (Second), requesting counsel for both parties be permitted to examine the following sealed material in the record of trial: sealed portions of Preliminary Hearing Officer (PHO) Exhibit 5; PHO Exhibits 14, 19, 20, 22, and 24; and pages 16–18 of the PHO report. These materials were previously available to counsel for the parties as part of the complete PHO report.

Appellate counsel may examine sealed materials released to counsel at trial “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities” Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

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

Accordingly, it is by the court on this 8th day of April 2025,

ORDERED:

Appellant’s Consent Motion to Examine Sealed Materials (Second) dated 3 April 2025 is **GRANTED**.

Appellate defense counsel and appellate government counsel may view sealed portions of **Preliminary Hearing Officer (PHO) Exhibit 5; PHO Exhibits 14, 19, 20, 22, and 24; and pages 16–18 of the PHO report**, subject to the following conditions:

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

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



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	CONSENT MOTION
<i>Appellee,</i>	)	TO EXAMINE SEALED
	)	MATERIALS (SECOND)
)	
v.	)	Before Panel No. 3
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	3 April 2025
<i>Appellant.</i>)	

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1, 23.1(b), and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, Appellant, Staff Sergeant Timothy D. Harnar, hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine the following sealed materials in Appellant’s record of trial: sealed portions of Preliminary Hearing Officer (PHO) Exhibit 5, PHO Exhibits 14, 19, 20, 22, 24, and pages 16–18 of the PHO Report.

Facts

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, found Appellant guilty, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59; Record of Trial (ROT) Vol. 1, Entry of Judgment (EOJ), 3 October 2023. This Court previously granted a consent motion to examine sealed materials, specifically Prosecution Exhibit 3. Order, *United States v. Harnar*, No. ACM 40559 (f rev), 24 March 2025. After this Court granted that motion, Appellant’s counsel identified additional sealed materials within the record of the preliminary hearing.

During the preliminary hearing, the parties introduced several exhibits that were ultimately ordered sealed either by the PHO or later by the military judge. App. Ex. X; ROT Vol. 2, DD Form 457, *Preliminary Hearing Officer's Report*, Continuation of Item 13a, 17 May 2023. The sealed materials included portions of the report of investigation (PHO Exhibit 5), a video clip depicting one of the named victims (PHO Exhibit 14), and Government notice of intent and motions to introduce evidence under M.R.E. 412(b)(2), along with a Victims' Counsel response (PHO exhibits 19, 20, 22, and 24). ROT Vol. 2, DD Form 457, Continuation of Item 13a. The sealed PHO exhibits were available to the parties at the preliminary hearing. Additionally, the PHO ordered pages 16–18 of the PHO report sealed. *See* ROT Vol. 2, DD Form 457, Continuation Pages. These pages were available to the parties as part of the complete PHO report following the preliminary hearing.

Law

Appellate counsel may examine materials presented or reviewed at trial and sealed, as well as materials reviewed *in camera*, released to trial or defense counsel, and sealed, upon a colorable showing to the appellate authority that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities under the UCMJ, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure, or rules of professional conduct. R.C.M. 1113(b)(3)(B)(i).

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide “competent representation,” perform “reasonable diligence,” and to “give a client his or her best professional evaluation of the questions that might be presented on appeal...[to] consider all issues that might affect the validity of the judgment of conviction and sentence...[to] advise on the probable outcome of a challenge

to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.” Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b) (11 December 2018). These requirements are consistent with those imposed by the state bar to which counsel belongs.¹

This Court may grant relief “on the basis of the entire record” of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel so detailed by The Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. This Court’s “broad mandate to review the record unconstrained by appellant’s assignments of error” does not reduce “the importance of adequate representation” by counsel; “independent review is not the same as competent appellate representation.” *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

Analysis

The sealed materials include six PHO exhibits, in whole or in part, which were “presented” and “reviewed” by the parties at the preliminary hearing. R.C.M. 1113(b)(3)(B)(i). Additionally, the sealed pages from the PHO report were available to the parties following the preliminary hearing. It is reasonably necessary for Appellant’s counsel to review this sealed materials for counsel to competently conduct a professional evaluation of Appellant’s case and uncover all issues which might afford him relief. Because examination of the materials in question is reasonably necessary to the fulfillment of counsel’s Article 70, UCMJ duties, and because the materials were available to the parties at or shortly after the preliminary hearing,


¹ Counsel of record is licensed to practice law in Georgia.

Appellant has provided the “colorable showing” required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel’s examination of these sealed materials and has shown good cause to grant this motion.

Appellant’s counsel has consulted with counsel for the Government, and the Government consents to both parties examining the sealed materials detailed above.

WHEREFORE, Appellant respectfully requests this Honorable Court grant this motion and permit examination of the aforementioned sealed materials contained within the original record of trial.

Respectfully submitted,




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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 April 2025.

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Staff Sergeant (E-5)

TIMOTHY D. HARNAR,

United States Air Force,

Appellant.

**BRIEF ON BEHALF OF
APPELLANT**

Before Panel No. 3

No. ACM 40559 (f rev)

21 April 2025

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

Assignments of Error

I.

Whether post-trial processing errors that demonstrate gross indifference and institutional neglect and resulted in unreasonable delay warrant relief.

II.

Whether the Government can prove 18 U.S.C. § 922 is constitutional as applied to Staff Sergeant Harnar when he was convicted of offenses that do not fall within the nation's historical tradition of firearm regulation.

Statement of the Case

On 13 September 2023, a general court-martial consisting of a military judge alone at Maxwell Air Force Base, Alabama, convicted Appellant, Staff Sergeant (SSgt) Timothy Harnar, consistent with his pleas, of one charge and two specifications of indecent recording in violation of Article 120c, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920c. R. at 59. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, total forfeiture of pay and allowances, confinement for ten months, and a bad-conduct discharge. R. at 106. The convening authority took no action on the findings or the sentence but waived automatic

forfeitures. Convening Authority Decision on Action – *United States v. SSgt Timothy D. Harnar*, 26 September 2023.

Statement of Facts

SSgt Harnar pleaded guilty to two specifications of indecent recording on 13 September 2023. R. at 59. By pleading guilty, he “saved the Government time, effort, and the expense of a fully litigated trial.” Pros. Ex. 1 at 6. Following his guilty plea, the Government prepared a record of trial, and this Court docketed the case on 17 January 2024. Order, *United States v. Harnar*, No. ACM 40559, 23 January 2024.

Immediately after docketing, this Court’s “cursory review of the record” identified several errors in the post-trial processing. *Id.* at 1. These errors included “missing exhibits from the preliminary hearing officer’s report, erroneous notations on the entry of judgment [(EOJ)] regarding when prejudice attaches to dismissal of certain specifications, and completion of the convening authority’s decision on action memorandum without providing the required timeframe for SSgt Harnar to respond to matters submitted by the victim pursuant to Rule for Courts-Martial [(R.C.M.)] 1106(d)(3).” *Id.* The Government agreed that the record should be remanded to address these errors, and this Court remanded the record for corrections on 31 January 2024. Order, *United States v. Harnar*, No. ACM 40559, 31 January 2024. The record was redocketed with the Court on 26 March 2024.

Additional facts are included *infra* as necessary.

Argument

I.

The post-trial processing errors that demonstrate gross indifference and institutional neglect and resulted in unreasonable delay warrant relief.

Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613–14 (citing *United States v. Kho*, 54 M.J. 63, 65 (C.A.A.F. 2000)). A Court of Criminal Appeals necessarily considers de novo whether excessive post-trial delay warrants relief under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

Law and Analysis

The post-trial processing in this case is marred by the Government’s errors in preparing the record of trial, which led to unreasonable delay. Even though SSgt Harnar’s guilty plea significantly simplified post-trial processing by avoiding the post-trial efforts required after a fully litigated trial, Pros. Ex. 1 at 6, the record produced by the Government still included multiple errors. The Government ignored SSgt Harnar’s right to rebut matters submitted by the victim under R.C.M. 1106(d)(3), failed to produce an accurate EOJ as required by R.C.M. 1111, and neglected multiple exhibits from the preliminary hearing officer’s report that must be attached to the record under R.C.M. 1112(f). Order, *United States v. Harnar*, No. ACM 40559, 23 January 2024. These errors were so readily apparent that this Court immediately spotted them after only a “cursory review.” *Id.* But the Government failed to identify the errors before forwarding the record. This Court has previously found “a systemic problem indicating institutional neglect” arising from post-trial processing errors in records of trial that “are happening at an alarming frequency in the Air Force.” *United States v. Valentin-Andino*, No. ACM 40185 (f rev), 2024 CCA LEXIS 223, at *17 (A.F. Ct. Crim. App. June 7, 2024), *aff’d*, __ M.J. __, No. 24-0208, 2025 CAAF

LEXIS 248 (C.A.A.F. Mar. 31, 2025). The errors in SSgt Harnar's record of trial are further examples of this institutional neglect.

Like the errors previously highlighted by this Court, the errors in SSgt Harnar's record caused delays in appellate review. *Id.* When the record was originally docketed on 17 January 2024, 126 days had elapsed from sentencing on 13 September 2023. Order, *United States v. Harnar*, No. ACM 40559, 23 January 2024. After this Court remanded the record for corrections on 31 January 2024, an additional fifty-five days passed before the record was redocketed on 26 March 2024. Order, *United States v. Harnar*, No. ACM 40559, 31 January 2024. Excluding the brief period when the record was docketed and this Court identified the errors, it took the Government 181 days from sentencing to prepare and docket a complete record of trial. This aggregate delay is facially unreasonable because it exceeds the 150 days this Court has previously held constitutes a facially unreasonable delay. *United States v. Livak*, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020).

This Court is statutorily empowered to "provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record." Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2). Article 66(d)(2) now constitutes the only authority for this Court to grant relief for post-trial processing errors because it superseded previous cases that addressed post-trial error under the old statute. *United States v. Valentin-Andino*, No. 24-0208, 2025 CAAF LEXIS 248, at *10 n.4 (C.A.A.F. Mar. 31, 2025). This Court should exercise its statutory authority to address the post-trial processing errors and resulting delay here.

When deciding to grant relief under Article 66(d)(2), UCMJ,¹ in *Valentin-Andino*, this Court focused on two factors: gross indifference to post-trial processing and institutional neglect concerning timely post-trial processing. 2024 CCA LEXIS 223, at *16–19. Both factors are also present in the instant case. The errors in SSgt Harnar’s record were strikingly similar to the errors in *Valentin-Andino*. In that case, the Government failed “to serve victim matters on Appellant before convening authority action” and failed “to include a substantial verbatim audio record of the proceedings.” *Valentin-Andino*, 2024 CCA LEXIS 223, at *16. Likewise, here, the Government once again failed to serve victim matters on SSgt Harnar before convening authority action. Order, *United States v. Harnar*, No. ACM 40559, 23 January 2024. It also failed to include required items—exhibits from the preliminary hearing officers report—in the record of trial. *Id.* The Government’s errors went even further here, as it also made critical errors in the EOJ regarding when prejudice attached to the dismissal of some specifications. *Id.*

The gross indifference to post-trial processing here is underscored by the obviousness of these errors. It took this Court mere days and a “cursory review” of the record to identify all three errors. *Id.* Yet, the Government apparently missed the errors throughout the 126 days it initially spent preparing the record, leading to an additional fifty-five days of delay after this Court remanded the record. And the Government had multiple opportunities to identify the errors before they reached this Court, as the prosecuting legal office prepared the record using provided checklists and later forwarded it to the Military Justice Law and Policy Division (JAJM). Department of the Air Force Manual (DAFMAN) 51-203, *Records of Trial*, ¶¶ 1.3.3.1, 6.5 (Apr

¹ This Court granted relief “under Article 66(d)(2), UCMJ, or [*United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002)],” but Article 66(d)(2) superseded *Tardif* and its progeny. *Valentin-Andino*, ___ M.J. ___, 2025 CAAF LEXIS 248, at *10 n.4 (quoting *Valentin-Andino*, 2024 CCA LEXIS 223, at *16). However, this error was harmless because this Court “had the authority to grant ‘appropriate relief’ under Article 66(d)(2).” *Id.* (quoting 10 U.S.C. § 866(d)(2)).

21, 2021). Considering the multiple errors that were all readily apparent and could have been—but were not—identified by multiple offices, the totality of the Government’s errors “demonstrates gross indifference to post-trial processing in this case which impacted timely processing.” *Valentin-Andino*, 2024 CCA LEXIS 223, at *17.

As in *Valentin-Andino*, “this case is not an aberration.” *Id.* As this Court noted, it has remanded numerous cases in recent years due to incomplete records of trial. *Id.* at *17–19. That pattern of neglect in post-trial processing led this Court to find “a systemic problem indicating institutional neglect.” *Id.* at *17. Despite the flood of feedback from this Court about post-trial processing errors and resulting delays, the Government continues to make obvious errors—including some of the same errors—in the records of trial it sends to this Court. SSgt Harnar’s record of trial is a continuation of the systemic problem highlighted by this Court, and it demonstrates institutional neglect.

Because the post-trial processing in SSgt Harnar’s case included both (1) patent errors evincing gross indifference and institutional neglect and (2) a resulting unreasonable delay in docketing a complete record of trial, this Court should grant appropriate relief under Article 66(d)(2), UCMJ. Appropriate relief is that which is “suitable considering the facts and circumstances surrounding that case.” *Valentin-Andino*, __ M.J. __, 2025 CAAF LEXIS 248, at *11. The circumstances here reveal that the errors and resulting delay were particularly egregious because SSgt Harnar’s case was a relatively short guilty plea for which the court-martial was only on the record for approximately three hours and twelve minutes. R. at 1, 41–42, 89–90, 104–06; *see also United States v. Atencio*, No. ACM S32783, 2024 CCA LEXIS 543, at *8–9 (A.F. Ct. Crim. App. Dec. 20, 2024) (finding post-trial processing delay “raise[d] serious concerns” where “the court-martial lasted a mere three-and-a-half hours”). Considering the multiple, obvious errors

that led to unreasonable delay when preparing the record of this brief court-martial, reducing the adjudged confinement by one month would be appropriate relief. The military judge sentenced SSgt Harnar to a total of ten months of confinement. R. at 106. This was a substantial term of the sentence, but not the most severe, as the sentence also included a bad-conduct discharge. *Id.* Affirming only nine months of the adjudged confinement would leave a sentence that still reflects the gravamen of the offenses. But it would also provide relief to SSgt Harnar and send an appropriate message to the Government about the importance of accurate and timely post-trial processing.

WHEREFORE, SSgt Harnar respectfully requests that this Court affirm only so much of the sentence as includes a reprimand, reduction to the grade of E-1, total forfeiture of pay and allowances, confinement for nine months, and a bad-conduct discharge.

II.

The government cannot prove 18 U.S.C. § 922 is constitutional as applied to Staff Sergeant Harnar because he was convicted of offenses that do not fall within the nation’s historical tradition of firearm regulation.

Additional Facts

The first indorsements to both the EOJ and statement of trial results (STR) state that SSgt Harnar is subject to a “Firearm Prohibition Triggered Under 18 U.S.C. § 922.” EOJ, 3 October 2023; STR, 14 September 2023.

Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *Zegarrundo*, 77 M.J. at 613–14 (citing *Kho*, 54 M.J. at 65). This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Lepore*, 81 M.J. 759, 760 (A.F. Ct. Crim. App. 2021).

A. Section 922 is unconstitutional as applied to SSgt Harnar.

The test for applying the Second Amendment is as follows:

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

N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 24 (2022) (quoting *United States v. Konigsberg*, 366 U.S. 36, 50, n.10 (1961)).

Although the annotation that Section 922 applies to the case is vague, the Government presumably intended to apply Section 922(g)(1), which bars the possession of firearms for those convicted “in any court, of a crime punishable by imprisonment for a term exceeding one year.” Under *Bruen*, subsection (g)(1) cannot constitutionally apply to SSgt Harnar, who stands convicted of offenses that have historically not merited firearms restrictions. To prevail, the Government would have to show a historical tradition of applying an undifferentiated ban on firearm possession, no matter the convicted offense, as long as the punishment could exceed one year of confinement. Regardless of the type or severity of an offense, all would be painted with the same brush. This the Government cannot show.

The historical tradition took a narrower view of firearms regulation for criminal acts than that reflected in Section 922:

[A]ctual “longstanding” precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates *a present danger that one will misuse arms against others and the disability redresses that danger.*

C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 Harv. J.L. & Pub. Pol'y 695, 698 (2009) (emphasis added). Prior to 1961, “the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a ‘crime of violence.’” *Id.* at 699. Earlier, the Uniform Firearms Act of 1926 and 1930 stated that “a person convicted of a ‘crime of violence’ could not ‘own or have in his possession or under his control, a pistol or revolver.’” *Id.* at 701, 704 (quoting 1926 Uniform Firearms Act §§ 1, 4). A “crime of violence” meant “committing or attempting to commit ‘murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny], burglary, and housebreaking.’” *Id.* at 701 (quoting 1926 Uniform Firearms Act § 1). The offenses of which SSgt Harnar was convicted fall short of these. It was not until 1968 that Congress “banned possession and extended the prohibition on receipt to include any firearm that ever had traveled in interstate commerce.” *Id.* at 698. “[I]t is difficult to see the justification for the complete lifetime ban for all felons that federal law has imposed only since 1968.” *Id.* at 735.

The Third Circuit adopted this logic to conclude that Section 922(g)(1) is unconstitutional as applied to an appellant with a conviction for making a false statement to obtain food stamps, which was punishable by five years’ imprisonment. *Range v. AG United States*, 124 F.4th 218, 232 (3d Cir. 2024). Evaluating Section 922(g)(1) in light of *Bruen* and *United States v. Rahimi*, 602 U.S. 680 (2024), the court noted that the earliest version of the statute prohibiting those convicted of crimes punishable by more than one year of imprisonment, from 1938, “applied only to *violent* criminals.” *Range*, 124 F.4th at 229. It found no “relevantly similar” analogue to imposing lifetime disarmament upon those who committed nonviolent crimes. *Id.* at 228–32. The real question, then, is whether SSgt Harnar’s convictions meet the historical tradition of regulating firearms based on a limited framing of “violent.”

In addition to the distinction on violence, a felony conviction today is vastly different from what constituted a felony prior to the 20th century, let alone at the time of this country's founding. This is problematic because categorizing crimes as felonies has not only increased, but done so in a manner inconsistent with the traditional understanding of a felony:

The need [for historical research] is particularly acute given the cancerous growth since the 1920s of “regulatory” crimes punishable by more than a year in prison, as distinct from traditional common-law crimes. The effect of this growth has been to expand the number and types of crimes that trigger “felon” disabilities to rope in persons whose convictions do not establish any threat that they will physically harm anyone, much less with a gun.

Marshall, *supra*, at 697. Notably, the “federal ‘felon’ disability--barring any person convicted of a crime punishable by more than a year in prison from possessing any firearm--is less than [64] years old.” *Id.* at 698. In fact, “one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I.” *Id.* at 708. On this point alone, the Government has not proven that such a ban is consistent with this country's history and tradition.

All the arguments above demonstrate that violation of a lawful general regulation does not qualify for a lifetime ban on firearms. The *Rahimi* case does not change the analysis. 602 U.S. at 680. In *Rahimi*, the Supreme Court addressed the validity of Section 922(g)(8)(C)(i), which applies once a court has found that a defendant “represents a credible threat to the physical safety of another” and issued a restraining order. *Id.* at 699. The Court concluded that the historical analysis supported the proposition that when “an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” *Id.* at 698.

But the historical analogue breaks down when applied here. In *Rahimi*, the Court noted that the “surety” and “going armed laws” which supported a restriction involved “whether a particular defendant likely would threaten or had threatened another with a weapon.” *Id.* at 699. The Court also noted that surety bonds were of limited duration, and that Section 922(g)(8) only

applied while a restraining order was in place. *Id.* By contrast, this case did not involve a threat with a weapon, and the firearms ban will last forever. Ultimately, the Supreme Court itself noted the limited nature of its holding. As the Supreme Court stated, “We conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” *Id.* at 702. Such a narrow holding cannot support the broad restriction encompassed here.

B. This Court may order correction of the First Indorsement to the Entry of Judgment under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

In *United States v. Williams*, the United States Court of Appeals for the Armed Forces (CAAF) considered whether the Army Court of Criminal Appeals (Army Court) had the authority to alter the military judge’s correction to the STR, which is incorporated into the judgment of the court signed by the military judge. *United States v. Williams*, 85 M.J. 121, 122–23 (C.A.A.F. 2024). In *Williams*, the military judge had erroneously marked on the STR that the appellant’s conviction triggered the Lautenberg Amendment, 18 U.S.C. § 922(g), after advising the appellant of the opposite during his guilty plea. *Id.* Later, in promulgating the judgment, the military judge incorporated and amended the original STR to correct the firearms ban so that 18 U.S.C. § 922(g) was not triggered. *Id.* at 124. On appeal, the Army Court changed the firearm bar on the STR *back*, to reindicate the appellant was barred from possessing a firearm. *Id.*

The CAAF determined that changing the STR back was an ultra vires act by the Army Court because “the STR is not part of the findings or sentence,” but rather “other information” required by R.C.M. 1101(a)(6). *Id.* at 126. Therefore, the Army Court did not have authority to act pursuant to Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018),² in this way. *Id.*

² The language at issue in Article 66, UCMJ, is not substantively different between the 2018 version analyzed in *Williams* and the version applicable to SSgt Harnar’s appeal.

The CAAF then analyzed whether the Army Court had the authority to change the firearm ban under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), as an “error . . . in the processing of the court-martial after the judgment was entered into the record.” *Id.* at 126–27. The CAAF concluded that Article 66(d)(2) did not apply for three reasons related to the unique facts of that case. *Id.* First, there was no “error” because the military judge corrected any erroneous notation on the STR before signing the judgment. *Id.* at 126. Thus, by the plain language of the statute, there was no error to consider after the EOJ. Second, assuming error, the burden of raising such error was on the accused. *Id.* As the appellant in *Williams* agreed with the military judge’s action in correcting the firearm notation, no error was raised. *Id.* Therefore, the Army Court’s “correction authority” had not been “triggered,” as the appellant never raised the firearm notation as an error. Third, assuming error and assuming the error had been raised, the timing of the military judge’s erroneous notation preceded the EOJ; it was on the STR. *Id.* at 127. Therefore, based on the plain language of Article 66(d)(2), UCMJ, it was not an error occurring *after* the EOJ. *Id.*

The CAAF did not foreclose properly raising an erroneous firearm notation to the service courts of appeal under Article 66(d)(2), UCMJ, when the error raised occurs *after* the EOJ, as in SSgt Harnar’s case.³ Unlike the appellant in *Williams*, SSgt Harnar meets the factual predicate to trigger this Court’s review under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

First, SSgt Harnar “demonstrated error” in his case—that he was erroneously and

³ The statutory authority for this Court to act may differ from the authority of the CAAF to address this issue under Article 67, 10 U.S.C. § 867, a question which may be resolved by the CAAF in *United States v. Johnson*, No. ACM 40257, USCA Dkt. No. 24-0004/SF, 84 M.J. 343 (C.A.A.F. Mar. 29, 2024), *vacated and review of other issues granted*, ___ M.J. ___ (C.A.A.F. Sep. 24, 2024) (the CAAF granted review of this case and later vacated its initial order and granted review of different issues). The military judge’s inclusion of the STR and its First Indorsement—and the firearms prohibition therein—into the EOJ is a “decision, judgment, or order” that was “incorrect in law.”

unconstitutionally deprived of his right to bear arms. In demonstrating this error, SSgt Harnar seeks correction of the EOJ, which includes the First Indorsement with the erroneous firearm bar.

This requested remedy is in line with *Williams*. While this Court cannot correct the erroneous firearms bar associated with the STR, it *can* correct the erroneous firearm notation on the First Indorsement attached to the EOJ, which was completed *after* the EOJ during post-trial processing. *Williams*, 85 M.J. at 126–27; *see also infra* at 12–13 (discussing timing in detail). Unlike the appellant in *Williams*, there is an error raised and demonstrated by SSgt Harnar for this Court to consider under Article 66(d)(2), UCMJ.

Second, the error on the First Indorsement depriving SSgt Harnar of his constitutional right to a firearm was an error in the “processing of the court-martial after the judgment was entered into the record under section 860(c) . . . (article 60(c)).” Article 66(d)(2), UCMJ. Under the applicable Air Force regulation, “[a]fter the EOJ is signed by the military judge and returned to the servicing legal office, the [Staff Judge Advocate] signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered.” Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, ¶ 20.41 (Jan. 24, 2024) (emphasis added). The firearm denotation on the first indorsement to the EOJ explicitly happens *after* the EOJ is signed by the military judge pursuant to Article 60(c), UCMJ. *Id.* Additionally, as this first indorsement is the most recent notification to law enforcement entities about the applicability of 18 U.S.C. § 922 to SSgt Harnar, it makes sense that this is the document the Court should review for post-trial processing error. *See id.* at ¶¶ 20.42, 29.6, 29.32, 29.33 (dictating when notifications are made through distribution of the EOJ with its first indorsement). Therefore, unlike the issue addressed in *Williams*, the error here occurred after the EOJ, in accordance with the last triggering criterion under Article 66(d)(2), UCMJ.

Finally, this Court’s authority to review the erroneous firearm ban under Article 66(d)(2), UCMJ, is not foreclosed by this Court’s published opinion in *United States v. Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024), *rev. granted*, USCA Dkt. No. 24-0182, ___ M.J. ___, 2024 CAAF LEXIS 640 (C.A.A.F. Oct. 17, 2024). In *Vanzant*, this Court determined it did not have authority to act on collateral consequences not a part of the findings or sentence specifically under Article 66(d)(1), UCMJ. *Id.* at 680 (“Article 66(d), UCMJ, provides that a [Court of Criminal Appeals] ‘may act only with respect to the findings and sentence as entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c].’”); *but see, e.g., United States v. Lawson*, No. ACM 23034, 2024 CCA LEXIS 431, at *2 (A.F. Ct. Crim. App. Oct. 17, 2024) (broadly summarizing *Vanzant* as standing for the proposition that “the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate’s indorsement to the [EOJ] is beyond a Court of Criminal Appeals’ statutory authority to review”). The CAAF later agreed with this Court’s interpretation of Article 66(d)(1). *Williams*, 85 M.J. at 125–26. However, SSgt Harnar is asking this Court to review an error in post-trial processing under Article 66(d)(2), UCMJ, which this Court did not analyze in *Vanzant*. *See* 84 M.J. at 680 (quoting the language of Article 66(d)(1), UCMJ, not (d)(2)). To effectuate any remedy, this Court should use its power under R.C.M. 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction, as, ultimately, the First Indorsement is a required component of the EOJ, albeit not part of the “findings” and “sentence,” and the error materially affects SSgt Harnar’s constitutional rights. R.C.M. 1111(b)(3)(F); R.C.M. 1112(b)(9); DAFI 51-201, at ¶ 20.41.

WHEREFORE, SSgt Harnar respectfully requests that this Court hold 18 U.S.C. § 922 is unconstitutional as applied to him and order correction of the First Indorsement to the EOJ, pursuant to its authority under Article 66(d)(2), UCMJ.

Respectfully submitted,



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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 21 April 2025.

Respectfully submitted,

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

UNITED STATES)	No. ACM 40559 (f rev)
<i>Appellee</i>)	
)	
v.)	
	)	NOTICE OF PANEL CHANGE
Timothy D. HARNAR)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>)	

It is by the court on this ^th day of May, 2025,

ORDERED:

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

This panel letter supersedes all previous panel assignments.



FOR THE COURT



Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION TO
<i>Appellee,</i>	)	WITHDRAW FROM APPELLATE
	)	REVIEW AND MOTION TO ATTACH
)	
v.	)	Before Panel No. 2
)	
Staff Sergeant (E-5)	)	No. ACM 40559 (f rev)
TIMOTHY D. HARNAR,)	
United States Air Force,	)	7 July 2025
<i>Appellant.</i>)	


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

Pursuant to Rule 16 of this Honorable Court’s Rules of Practice and Procedure, and Rule for Courts-Martial (R.C.M.) 1115, Appellant, Staff Sergeant Timothy D. Harnar, hereby moves to withdraw his case from appellate review. Appellant has fully consulted with Major Frederick Johnson, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise to withdraw his case from appellate review.

Further, pursuant to Rules 23(b) and 23.3(b) of this Honorable Court’s Rules of Practice and Procedure, Appellant asks this Court to attach the seven-page document appended to this pleading to Appellant’s Record of Trial. The document is Appellant’s completed Department of Defense Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, to include the entry of judgment referenced in the top line of the form, and is therefore necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court’s Rules of Practice and Procedure.

WHEREFORE, this Honorable Court should grant this motion to withdraw from appellate review and attach the requested document to the record.

Respectfully submitted,

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Counsel for Appellant

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 July 2025.

Respectfully submitted,



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