

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

UNITED STATES)	No. ACM 40712
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Phoenix O. HORTON)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 1

On 6 January 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposed the motion.

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

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

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **18 March 2025**.

Each request for an enlargement of time 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.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Senior Airman (E-4)

PHOENIX O. HORTON,

United States Air Force,

Appellant.

) **APPELLANT’S MOTION**

) **FOR ENLARGEMENT**

) **OF TIME (FIRST)**

)

) Before Panel No. 1

)

) No. ACM 40712

)

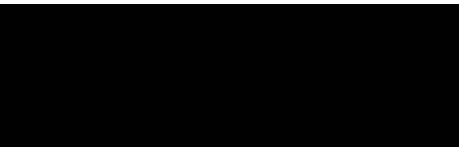
) 6 January 2025

**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 Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **18 March 2025**. The record of trial was docketed with this Court on 18 November 2024. From the date of docketing to the present date, 49 days have elapsed. On the date requested, 120 days will have elapsed.

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

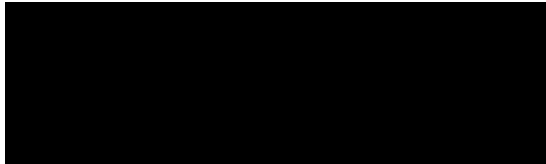
Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
(240) 612-4770
samantha.castanien.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 6 January 2025.



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.castanien.1@us.af.mil

7 January 2024

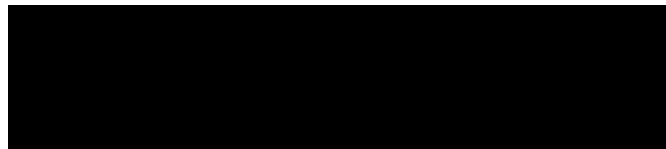
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Senior Airman (E-4)	)	ACM 40712
PHOENIX O. HORTON, USAF)	
<i>Appellant.</i>	)	Panel No. 1
)	

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

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

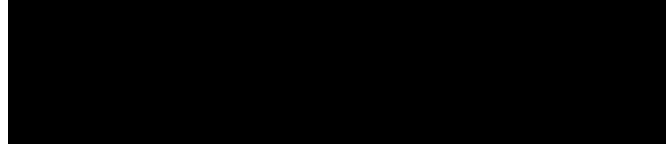
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 7 January 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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	CONSENT MOTION TO EXAMINE
	)	SEALED MATERIALS
v.)	
	)	Before Panel No. 1
Senior Airman (E-4))	
PHOENIX O. HORTON	)	No. ACM 40712
United States Air Force,)	
<i>Appellant.</i>	)	4 February 2025

**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, undersigned counsel hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine sealed Prosecution Exhibits 2 and 6 in the above-named case.

Facts

On 1 August 2024, at a general court-martial convened at Robins Air Force Base, Georgia, Appellant was found guilty, consistent with his pleas, of one specifications of Article 134, Uniform Code of Military Justice (UCMJ), viewing child pornography. *Entry of Judgment*, 27 August 2024, eROT pg. 2-3. The military judge sentenced Appellant to a reduction to the rank of E-1, five (5) months confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 16 August 2024.

During the court-martial, the Prosecution admitted Prosecution Exhibits 2, a single disk containing contraband images, and Prosecution Exhibit 6, a single disk containing further contraband images. *Transcript* pg. 22, eROT pg. 359. Admission of the exhibits was stipulated to by the parties. Prosecution Exhibit 1, *Stipulation of Fact*, pg. 3-4, eROT pg. 25. The Military Judge subsequently sealed these exhibits. *Transcript* pg. 23, eROT pg. 340.

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 MCM, 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, Rule 1.3(11 Dec. 18); AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

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 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

Sealed Prosecutions 2 and 6 identified in the fact section above appear to be the explicit images which form the foundation for the child pornography allegations referred against Appellant. The Prosecution exhibits were provided to the parties in advance of the Court-Martial, and admission of the exhibits were stipulated to by both Government and Defense counsel. Thus, it is evident the parties “presented” and “reviewed” the sealed material.

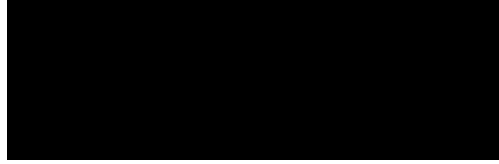
It is reasonably necessary for Appellant’s counsel to review these sealed exhibits and for counsel to competently conduct a professional evaluation of Appellant’s case and to uncover all issues which might afford him relief. To do so, a review of the sealed materials which form the basis for the charges is necessary to evaluate whether there was any information Defense counsel should have considered when evaluating the benefit of entering into the plea agreement, as well as what legal risks the Appellant may face if his guilty plea is overturned for any reason.

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 made available to the parties at the Article 32, UCMJ, hearing, and prior to Court-Martial Appellant has provided the “colorable showing” required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel’s examination of sealed materials and has shown good cause to grant this motion.

The Government consents to both parties viewing the sealed materials detailed above. Undersigned counsel will be at Joint Base Andrews for her annual tour from February 24 to March 7, 2025 and can review the sealed materials at that time.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this consent motion.

Respectfully submitted,

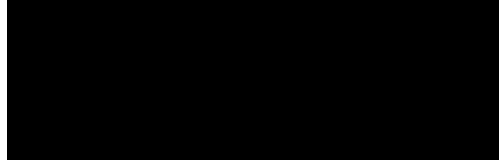


REBECCA J. SAATHOFF, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: rebecca.saathoff.2@us.af.mil

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 at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 4 February 2025.

Respectfully submitted,



REBECCA J. SAATHOFF, 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: rebecca.saathoff.2@us.af.mil

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Phoenix O. HORTON)	
Senior Airman (E-4))	
U.S. Air Force)	
<i>Appellant</i>)	Panel 1

On 4 February 2025, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting both parties be allowed to examine Prosecution Exhibits 2 and 6, both ordered sealed by the military judge. The exhibits were presented or reviewed by the parties at trial. Appellant’s counsel avers counsel for the Government consents to this motion.

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 sealed materials is reasonably necessary for a proper fulfillment of appellate defense counsel’s responsibilities. This court’s order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 6th day of February, 2025,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Prosecution Exhibits 2 and 6**, 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

UNITED STATES,) APPELLANT'S MOTION
Appellee,) TO WITHDRAW AND ATTACH
))
v.))
) Before Panel No. 1
Senior Airman (E-4)))
PHOENIX O. HORTON,) No. ACM 40712
United States Air Force,))
Appellant.) 6 March 2025

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Major Rebecca Saathoff, 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.

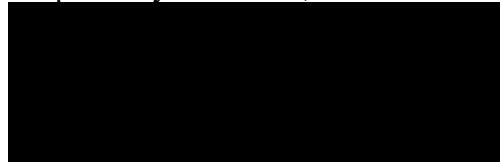
Further, pursuant to Rules 23(b) and 23.3(b), undersigned counsel asks this Court to attach the two-page document appended to this pleading to the record of this proceeding. The appended document, Appellant's completed DD Form 2330, *Waiver/Withdrawal of Appellate Rights in General and Special Courts-Martial Subject to Review by a Court of Criminal Appeals*, is necessary to comply with R.C.M. 1115(d) and Rule 16.1 of this Honorable Court's Rules of Practice and Procedure.

Counsel respectfully requests to withdraw the previously filed Motion to Withdraw and Attach, filed on 5 March 2025, as it inadvertently sought to attach the old version of the Waiver/Withdrawal of Appellate Rights form, DD Form 2331, effective July 2016, rather than the

current version of that form, DD Form 2330, effective January 2019. The correct/updated version of the form has been attached to this motion.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion to withdraw from appellate review and attach matters to the record.

Respectfully submitted,

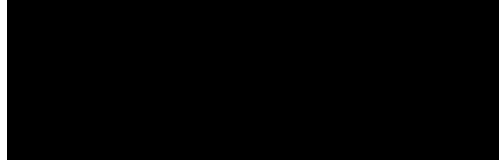


REBECCA J. SAATHOFF, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770; Cell 408-713-0484
Email: rebecca.saathoff.2@us.af.mil

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Respectfully submitted,



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Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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