

THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

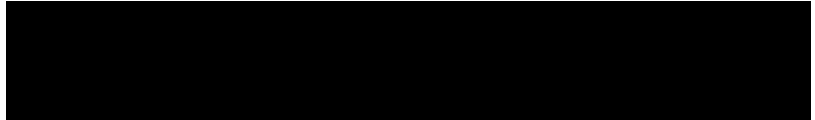
UNITED STATES	)	NOTICE OF DIRECT APPEAL
<i>Appellee</i>	)	PURSUANT TO ARTICLE 66(b)(1)(A),
	)	UCMJ
)	
v.)	
)	
Airman (E-2)	)	No. ACM SXXXXXX
JOSHUA M. HUPP)	
United States Air Force	)	12 March 2024
<i>Appellant</i>)	

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

On 14 September 2023, Appellant was tried by a special court-martial sitting as a military judge alone at Yokota Air Base, Japan. Record of Trial (ROT), Vol. 1, Entry of Judgement, dated 14 September 2023, at 1. Appellant was convicted, consistent with his pleas, of one charge and specification of wrongful broadcast, in violation of Article 117a, Uniform Code of Military Justice (UCMJ), and one charge and two specifications of assault consummated by a battery, in violation of Article 128, UCMJ. *Id.* at 2-3. One charge and two specifications of abusive sexual contact, in violation of Article 120, UCMJ, and one charge and two specifications of unlawfully making and distributing a recording of another's private area, in violation of Article 120c, UCMJ, were withdrawn and dismissed with prejudice. *Id.* at 1-2. The military judge sentenced Appellant to a reprimand, a reduction in pay grade to Airman Basic (E-1), and 30 days of confinement. *Id.* at 3-4. The convening authority took no action on the findings or sentence. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Amn Joshua M. Hupp.*

On 14 December 2023, the Government provided Appellant the required notice, by mail, of his right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, Appellant files his notice of direct appeal with this Court.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 Appellate Government Division on 12 March 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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

UNITED STATES <i>Appellee</i>	)	No. ACM _____
)	
)	
v.)	
)	
Joshua M. HUPP Airman (E-2) U.S. Air Force <i>Appellant</i>	)	NOTICE OF DOCKETING
)	
)	

On 12 March 2024, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A).

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

Accordingly, it is by the court on this 13th day of March, 2024,


ORDERED:

The case in the above-styled matter is referred to Panel 2.

It is further ordered:

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



FOR THE COURT

TANICA S. BAGMON
Appellate Court Paralegal

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

UNITED STATES	)	No. ACM 24026
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Joshua M. HUPP)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 10 July 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. Counsel noted that from the date of docketing to when this enlargement would end, 189 days will have elapsed, and from the date of receipt of the verbatim record to when this enlargement would end, 120 days will have elapsed. The Government opposes the motion.

Counsel for Appellant helpfully provided the following information: (1) “Appellant was advised of his right to a timely appeal;” (2) “Appellant was advised of the request for this enlargement of time;” (3) Appellant “consented to the request for this enlargement;” and (4) counsel “provided Appellant with an update on the status of undersigned counsel’s progress on his case.”

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 16th day of July, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **18 September 2024**.

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits. Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal.

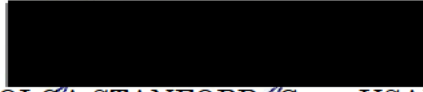
Appellant’s counsel is advised that any subsequent motions for enlargement of time each shall include, in addition to matters required under this court’s Rules of Practice and Procedure, statements as to: (1) whether Appellant was provided an update of the status of counsel’s progress on Appellant’s case, (2) whether Appellant was advised of the request for an enlargement of

time, and (3) 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 390 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 2
)	
Airman (E-2)	)	No. ACM 24026
JOSHUA M. HUPP,)	
United States Air Force	)	10 July 2024
<i>Appellant</i>)	

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

Pursuant to Rule 23.3(m)(1), (2), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **18 September 2024**. This case was docketed with this Court on 13 March 2024.¹ The verbatim transcript was received by this Court on 21 May 2024. From the date of receipt of the verbatim transcript to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

On 14 September 2023 at Yokota Air Base, Japan, Appellant was tried by a special court-martial consisting of a military judge sitting alone. R. at 1, 8. Consistent with his pleas, R. at 10, Appellant was convicted of one charge and specification of broadcast of an intimate visual image, in violation of Article 117a, Uniform Code of Military Justice (UCMJ), and one charge and two specifications of assault consummated by a battery, in violation of Article 128, UCMJ. R. at 97. Pursuant to a plea agreement, R. at 87, the Government withdrew and dismissed, with prejudice, one charge and two specifications of abusive sexual contact, in violation of Article 120, UCMJ,

¹ From the date of docketing to the present date, 119 days have elapsed. On the date requested, 189 days will have elapsed.

and one charge and two specifications of indecent recording, in violation of Article 120c, UCMJ. R. at 96, 152. The military judge sentenced Appellant to confinement for thirty days, reduction to the pay grade of E-1, and a reprimand. R. at 151-52. The convening authority took no action with regard to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Amn Joshua M. Hupp*. Appellant is not confined.

The ROT is two volumes, consisting of four prosecution exhibits, eight defense exhibits, four appellate exhibits, and one court exhibit. The transcript is 153 pages.

Undersigned counsel is assigned 23 cases, 17 cases are pending initial AOE's before this Court. One case before the Court of Appeals for the Armed Forces (CAAF) takes priority over this case: *United States v. Valentin-Andino*. Undersigned counsel is presently conducting research in preparation of filing a petition for grant of review and corresponding supplement. In addition, the following cases before this Court take priority over the instant one:

- 1) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. Undersigned counsel is presently drafting several assignments of errors, which is due on 18 July 2024. This appellant is no longer confined.
- 2) *United States v. Rice*, ACM 40502 – The record of trial is ten volumes, consisting of 41 appellate exhibits, 14 prosecution exhibits, four defense exhibits, and two court exhibits; the transcript is 514 pages. This appellant is confined.
- 3) *United States v. Couty*, ACM 40484 – The record of trial is seven volumes, consisting of 20 prosecution exhibits, two defense exhibits, two court exhibits, and 29 appellate exhibits; the transcript is 868 pages. Undersigned counsel has begun reviewing the unsealed record and has conducted research on various identified errors. This appellant is confined.

- 4) *United States v. Kelnhofer*, ACM 23012 – The record of trial is two volumes, consisting of 18 prosecution exhibits, three defense exhibits, and 11 appellate exhibits; the transcript is 494 pages. Undersigned counsel has begun a review of the record. This appellant is not currently confined.
- 5) *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. Civilian co-counsel has begun reviewing the record. This appellant is not currently confined.
- 6) *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. Undersigned counsel has identified at least one issue in this record. This appellant is currently confined.
- 7) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. This appellant is currently confined.
- 8) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. This appellant is not currently confined.
- 9) *United States v. Beyer*, ACM 40566 – The record of trial is seven volumes, consisting of four prosecution exhibits, four defense exhibits, 66 appellate exhibits, and one court exhibit; the transcript is 939 pages. Civilian co-counsel has begun a review of the unsealed record. This appellant is not confined.

- 10) *United States v. Kauffeld*, ACM 24010 – The record of trial is four volumes, consisting of four prosecution exhibits, 10 defense exhibits, and 19 appellate exhibits; the transcript is 380 pages.
- 11) *United States v. Pellegrino*, ACM S32775 – The record of trial is an electronic record consisting of 328 pages. There are three prosecution exhibits, one defense exhibit, and four appellate exhibits. The transcript is 125 pages.
- 12) *United States v. Toothman*, ACM 40599 – The record of trial is four volumes, consisting of nine prosecution exhibits, one defense exhibit, and 16 appellate exhibits; the transcript is 99 pages.
- 13) *United States v. Ryder*, ACM 40605 – The record of trial is four volumes, consisting of three prosecution exhibits, 10 defense exhibits, and six appellate exhibits; the transcript is 173 pages.
- 14) *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Additionally,

undersigned counsel provided Appellant with an update on the status of undersigned counsel's progress on his case.²

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

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

² Appellant provided a limited consent to disclose this attorney-client privileged communication.

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 Appellate Government Division on 10 July 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

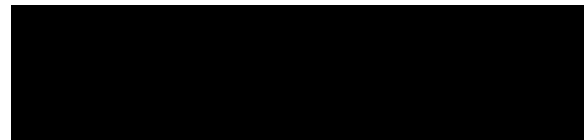
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman (E-2)	)	ACM 24026
JOSHUA M. HUPP, USAF,)	
<i>Appellant.</i>	)	Panel No.2
)	

**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.

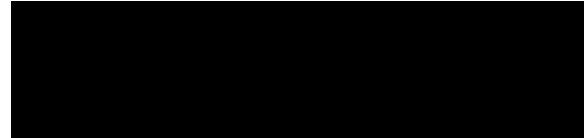
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 12 July 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
	)	ENLARGEMENT OF TIME (SECOND)
)	
v.	)	Before Panel 2
)	
Airman (E-2)	)	No. ACM 24026
JOSHUA M. HUPP,)	
United States Air Force	)	6 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)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **18 October 2024**. This case was docketed with this Court on 13 March 2024.¹ The verbatim transcript was received by this Court on 21 May 2024. From the date of receipt of the verbatim transcript to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 14 September 2023 at Yokota Air Base, Japan, Appellant was tried by a special court-martial consisting of a military judge sitting alone. R. at 1, 8. Consistent with his pleas, R. at 10, Appellant was convicted of one charge and specification of broadcast of an intimate visual image, in violation of Article 117a, Uniform Code of Military Justice (UCMJ), and one charge and two specifications of assault consummated by a battery, in violation of Article 128, UCMJ. R. at 97. Pursuant to a plea agreement, R. at 87, the Government withdrew and dismissed, with prejudice, one charge and two specifications of abusive sexual contact, in violation of Article 120, UCMJ,

¹ From the date of docketing to the present date, 177 days have elapsed. On the date requested, 219 days will have elapsed.

and one charge and two specifications of indecent recording, in violation of Article 120c, UCMJ. R. at 96, 152. The military judge sentenced Appellant to confinement for thirty days, reduction to the pay grade of E-1, and a reprimand. R. at 151-52. The convening authority took no action with regard to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Amn Joshua M. Hupp*. Appellant is not confined.

The ROT is two volumes, consisting of four prosecution exhibits, eight defense exhibits, four appellate exhibits, and one court exhibit. The transcript is 153 pages.

Undersigned counsel is assigned 21 cases, 12 cases are pending initial AOE's before this Court. One case before the Court of Appeals for the Armed Forces (CAAF) takes priority over this case: *United States v. Daughma*. Undersigned counsel is presently drafting a petition and corresponding supplement to the CAAF. In addition, the following cases before this Court take priority over the instant one:

- 1) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. Undersigned counsel filed the reply brief on 28 August 2024. In addition, undersigned counsel filed a motion for oral argument; if granted, preparation for oral argument would take priority over the instant case.
- 2) *United States v. Couty*, ACM 40484 – The record of trial is seven volumes, consisting of 20 prosecution exhibits, two defense exhibits, two court exhibits, and 29 appellate exhibits; the transcript is 868 pages. Undersigned counsel filed an assignment of errors brief on 13 August 2024. The Government's Answer is due on 12 September 2024, with any reply being due on 19 September 2024.

- 3) *United States v. Kelnhofer*, ACM 23012 – The record of trial is two volumes, consisting of 18 prosecution exhibits, three defense exhibits, and 11 appellate exhibits; the transcript is 494 pages. Undersigned counsel has begun drafting of an Assignment of Errors brief.
- 4) *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. Civilian co-counsel has begun reviewing the record.
- 5) *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. Undersigned counsel has identified at least one issue in this record.
- 6) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages.
- 7) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages.
- 8) *United States v. Beyer*, ACM 40566 – The record of trial is seven volumes, consisting of four prosecution exhibits, four defense exhibits, 66 appellate exhibits, and one court exhibit; the transcript is 939 pages. Civilian co-counsel has completed a review of the record and begun drafting an assignment of errors brief. Undersigned counsel has begun a review of the sealed and unsealed record.

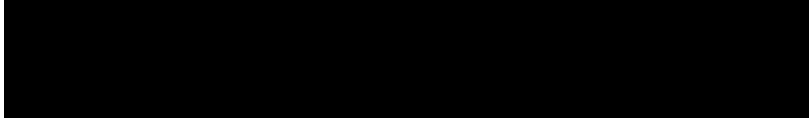
- 9) *United States v. Kauffeld*, ACM 24010 – The record of trial is four volumes, consisting of four prosecution exhibits, 10 defense exhibits, and 19 appellate exhibits; the transcript is 380 pages.
- 10) *United States v. Toothman*, ACM 40599 – The record of trial is four volumes, consisting of nine prosecution exhibits, one defense exhibit, and 16 appellate exhibits; the transcript is 99 pages.
- 11) *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Additionally, undersigned counsel provided Appellant with an update on the status of undersigned counsel's progress on his case.²

² Appellant provided a limited consent to disclose this attorney-client privileged communication.

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

Respectfully submitted,

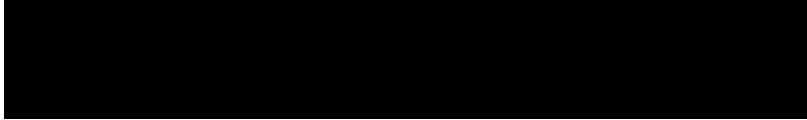


TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 Appellate Government Division on 6 September 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

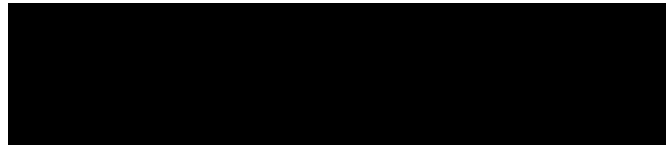
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman (E-2)	)	ACM 24026
JOSHUA M. HUPP, USAF,)	
<i>Appellant.</i>	)	Panel No.2
)	

**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 9 September 2024.



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

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 2
)	
Airman (E-2)	)	No. ACM 24026
JOSHUA M. HUPP,)	
United States Air Force	)	8 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)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 November 2024**. This case was docketed with this Court on 13 March 2024.¹ The verbatim transcript was received by this Court on 21 May 2024. From the date of receipt of the verbatim transcript to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 14 September 2023 at Yokota Air Base, Japan, Appellant was tried by a special court-martial consisting of a military judge sitting alone. R. at 1, 8. Consistent with his pleas, R. at 10, Appellant was convicted of one charge and specification of broadcast of an intimate visual image, in violation of Article 117a, Uniform Code of Military Justice (UCMJ), and one charge and two specifications of assault consummated by a battery, in violation of Article 128, UCMJ. R. at 97. Pursuant to a plea agreement, R. at 87, the Government withdrew and dismissed, with prejudice, one charge and two specifications of abusive sexual contact, in violation of Article 120, UCMJ,

¹ From the date of docketing to the present date, 209 days have elapsed. On the date requested, 249 days will have elapsed.

and one charge and two specifications of indecent recording, in violation of Article 120c, UCMJ. R. at 96, 152. The military judge sentenced Appellant to confinement for thirty days, reduction to the pay grade of E-1, and a reprimand. R. at 151-52. The convening authority took no action with regard to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Amn Joshua M. Hupp*. Appellant is not confined.

The ROT is two volumes, consisting of four prosecution exhibits, eight defense exhibits, four appellate exhibits, and one court exhibit. The transcript is 153 pages.

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- 1) *United States v. Pulley*, ACM 40438 – The record of trial is 11 volumes, consisting of 22 prosecution exhibits, five defense exhibits, and 66 appellate exhibits; the transcript is 730 pages. While briefing is complete in this case, undersigned counsel filed a motion for oral argument; if granted, preparation for oral argument would take priority over the instant case.
- 2) *United States v. Kelnhofner*, ACM 23012 – The record of trial is two volumes, consisting of 18 prosecution exhibits, three defense exhibits, and 11 appellate exhibits; the transcript is 494 pages. Undersigned counsel filed an assignment of errors brief on 23 September 2024; the Government's answer is due on 23 October 2024, with any reply being due on 30 October 2024.

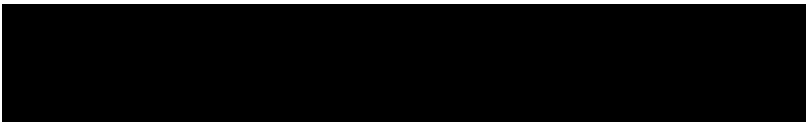
- 3) *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. Civilian co-counsel has begun reviewing the record. Undersigned counsel has completed a review of the record and has identified several assignments of error.
- 4) *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. Undersigned counsel has identified at least one issue in this record.
- 5) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages.
- 6) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages.
- 7) *United States v. Beyer*, ACM 40566 – The record of trial is seven volumes, consisting of four prosecution exhibits, four defense exhibits, 66 appellate exhibits, and one court exhibit; the transcript is 939 pages. An initial assignment of errors brief was filed with this Court on 30 September 2024. The Government’s answer is due on 30 October 2024, with any reply due on 6 November 2024.
- 8) *United States v. Kauffeld*, ACM 24010 – The record of trial is four volumes, consisting of four prosecution exhibits, 10 defense exhibits, and 19 appellate exhibits; the transcript is 380 pages.

9) *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant’s case. An enlargement of time is necessary to allow counsel time to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Additionally, undersigned counsel provided Appellant with an update on the status of undersigned counsel’s progress on his case.²

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

Respectfully submitted,



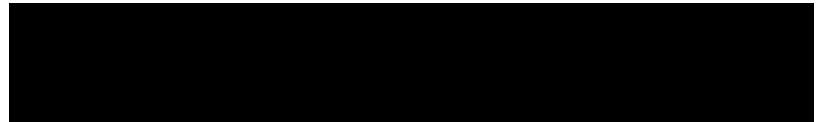
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Air Force Appellate Defense Division
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² Appellant provided a limited consent to disclose this attorney-client privileged communication.

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Respectfully submitted,



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United States Air Force
(240) 612-2807

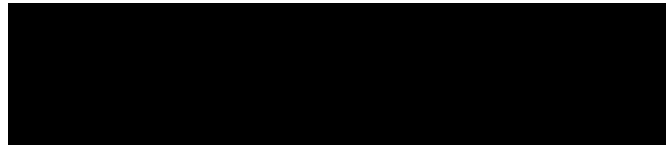
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman (E-2)	)	ACM 24026
JOSHUA M. HUPP, USAF,)	
<i>Appellant.</i>	)	Panel No.2
)	

**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 10 October 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	)	APPELLANT’S MOTION FOR
<i>Appellee</i>	)	ENLARGEMENT OF TIME (FOURTH)
)	
v.	)	Before Panel 2
)	
Airman (E-2)	)	No. ACM 24026
JOSHUA M. HUPP,)	
United States Air Force	)	5 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)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **17 December 2024**. This case was docketed with this Court on 13 March 2024.¹ The verbatim transcript was received by this Court on 21 May 2024. From the date of receipt of the verbatim transcript to the present date, 168 days have elapsed. On the date requested, 210 days will have elapsed.

On 14 September 2023 at Yokota Air Base, Japan, Appellant was tried by a special court-martial consisting of a military judge sitting alone. R. at 1, 8. Consistent with his pleas, R. at 10, Appellant was convicted of one charge and specification of broadcast of an intimate visual image, in violation of Article 117a, Uniform Code of Military Justice (UCMJ), and one charge and two specifications of assault consummated by a battery, in violation of Article 128, UCMJ. R. at 97. Pursuant to a plea agreement, R. at 87, the Government withdrew and dismissed, with prejudice, one charge and two specifications of abusive sexual contact, in violation of Article 120, UCMJ,

¹ From the date of docketing to the present date, 237 days have elapsed. On the date requested, 279 days will have elapsed.

and one charge and two specifications of indecent recording, in violation of Article 120c, UCMJ. R. at 96, 152. The military judge sentenced Appellant to confinement for thirty days, reduction to the pay grade of E-1, and a reprimand. R. at 151-52. The convening authority took no action with regard to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Amn Joshua M. Hupp*. Appellant is not confined.

The ROT is two volumes, consisting of four prosecution exhibits, eight defense exhibits, four appellate exhibits, and one court exhibit. The transcript is 153 pages.

Undersigned counsel is assigned 26 cases, 17 cases are pending initial AOE's before this Court. Two cases before the Court of Appeals for the Armed Forces (CAAF) take priority over this case: *United States v. Valentin-Andino* and *United States v. Pulley*. Undersigned counsel filed an initial brief in *Valentin-Andino* on 30 October 2024, with the Government's Answer due on 2 December 2024. Any reply will be due on 9 December 2024. Undersigned counsel has begun research in *Pulley* in preparation of drafting a petition and corresponding supplement. In addition, the following cases before this Court take priority over the instant one:

- 1) *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. Civilian co-counsel has begun reviewing the record. Undersigned counsel has completed a review of the record and identified at least five potential errors. However, civilian co-counsel has suffered an injury rendering him unable to read. This has delayed preparation of a brief in this case.
- 2) *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit;

the transcript is 1,084 pages. Undersigned counsel has completed a review of the unsealed exhibits in this case.

- 3) *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages.
- 4) *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages.
- 5) *United States v. Beyer*, ACM 40566 – The record of trial is seven volumes, consisting of four prosecution exhibits, four defense exhibits, 66 appellate exhibits, and one court exhibit; the transcript is 939 pages. An initial assignment of errors brief was filed with this Court on 30 September 2024. The Government has moved for an enlargement of time to file their answer for an indefinite period. This Court has yet to act on that motion.
- 6) *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Additionally,

undersigned counsel provided Appellant with an update on the status of undersigned counsel's progress on his case.²

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

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

² Appellant provided a limited consent to disclose this attorney-client privileged communication.

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 Appellate Government Division on 5 November 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

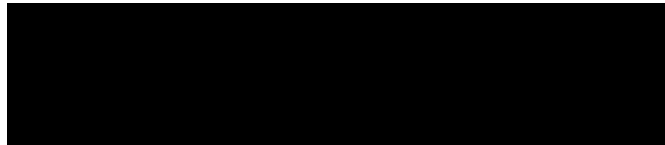
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman (E-2)	)	ACM 24026
JOSHUA M. HUPP, USAF,)	
<i>Appellant.</i>	)	Panel No.2
)	

**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 6 November 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 24026
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Joshua M. HUPP)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 2

On 6 December 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Fifth) requesting an additional 30 days to submit Appellant’s assignments of error. The Government opposes the motion.

Appellant’s counsel noted that from the date of receipt of the record of trial to when this enlargement would end, 240 days will have elapsed. However, Appellant’s counsel failed to state, as required by our rules, “the number of days that will have elapsed since docketing on the date requested.” A.F. CT. CRIM. APP. R. 23.3(m)(4). Indeed, from the date of docketing to when this enlargement would end, 309 days will have elapsed.

In a footnote in his motion, Appellant’s counsel explains his confusion with regard to application of the court’s rules to this case. He cites to an order issued by a different panel in a different case: *United States v. Ching*, dated 19 October 2023. In that case, the appellant requested Rule 18 be suspended until the Government produced a verbatim transcript. The court denied that request, but stated the time for filing a brief begins to run after the court has received the record of trial. Appellant’s counsel ends the footnote: “Because this Court has not indicated otherwise in this case, calculation will continue to be from receipt of record of trial.”

In an order dated 16 July 2024, this court granted Appellant’s Motion for Enlargement of Time (First). This court advised counsel “that any future requests for enlargements of time that, if granted, would expire more than 390 days after *docketing*, will not be granted absent exceptional circumstances.” (Emphasis added.) This order and Rule 23.3(m)(4) together make it clear in this case that the date of docketing is to be used in calculations.

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

Accordingly, it is by the court on this 10th day of December, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (Fifth) is **GRANTED**. Appellant shall file any assignments of error not later than **16 January 2025**.



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
	)	ENLARGEMENT OF TIME (FIFTH)
)	
v.	)	Before Panel 2
)	
Airman (E-2)	)	No. ACM 24026
JOSHUA M. HUPP,)	
United States Air Force	)	6 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)(4) and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignment of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 January 2025**. This case was docketed with this Court on 13 March 2024.¹ The verbatim transcript was received by this Court on 21 May 2024. From the date of receipt of the verbatim transcript to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.²

On 14 September 2023 at Yokota Air Base, Japan, Appellant was tried by a special court-martial consisting of a military judge sitting alone. R. at 1, 8. Consistent with his pleas, R. at 10, Appellant was convicted of one charge and specification of broadcast of an intimate visual image,

¹ From the date of docketing to the present date, 268 days have elapsed. On the date requested, 309 days will have elapsed.

² It should be noted that this Court has provided conflicting guidance on the triggering date for direct appeal filing deadlines. *Compare* Order, *United States v. Norris*, dated 6 December 2024 (“Appellant appears to confuse the ‘triggering date’ for the appellate brief filing deadlines, insofar as his appellate counsel asserts that it is not docketing but rather this court’s physical receipt of the record of trial which triggers . . . filing deadlines. . . . Not so.”), *with* Order, *United States v. Ching*, dated 19 October 2023 (“The court has also not yet received the record of trial. Once that notification has occurred . . . the time for filing a brief begins to run.”). Because this Court has not indicated otherwise in this case, calculation will continue to be from receipt of record of trial.

in violation of Article 117a, Uniform Code of Military Justice (UCMJ), and one charge and two specifications of assault consummated by a battery, in violation of Article 128, UCMJ. R. at 97. Pursuant to a plea agreement, R. at 87, the Government withdrew and dismissed, with prejudice, one charge and two specifications of abusive sexual contact, in violation of Article 120, UCMJ, and one charge and two specifications of indecent recording, in violation of Article 120c, UCMJ. R. at 96, 152. The military judge sentenced Appellant to confinement for thirty days, reduction to the pay grade of E-1, and a reprimand. R. at 151-52. The convening authority took no action with regard to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Amn Joshua M. Hupp*. Appellant is not confined.

The ROT is two volumes, consisting of four prosecution exhibits, eight defense exhibits, four appellate exhibits, and one court exhibit. The transcript is 153 pages.

Counsel is currently assigned 25 cases; 17 cases are pending initial AOE's before this Court. One case before the United States Supreme Court takes priority over this case: *United States v. Nestor*. Undersigned counsel—in coordination with counsel in *United States v. Wells*, the parent case—filed an extension of time for filing a petition for writ of certiorari. That extension was granted to 21 February 2024.

Further, four cases before the Court of Appeals for the Armed Forces (CAAF) have priority over this case:

- 1) *United States v. Valentin-Andino*. Undersigned counsel filed an opening brief in this case on 30 October 2024. The Government filed its answer yesterday, 5 December 2024. Undersigned counsel has reviewed the Government's answer and is conducting research in preparation for a reply brief. In addition, oral argument is scheduled for 14 January 2025.

Three moot arguments are scheduled for 30 December 2024, 6 January 2025, and 10 January 2025, all of which will require substantial preparation.

- 2) *United States v. Pulley*. This appellant intends to file a petition for grant of review and corresponding supplement to the CAAF. The petition and corresponding supplement are due on 18 December 2024. Undersigned counsel is presently conducting research and has begun drafting the supplement.
- 3) *United States v. Washington*. This appellant intends to file a petition for grant of review and corresponding supplement to the CAAF. The petition has been filed and the supplement brief is due on 26 December 2024. Undersigned counsel has not yet begun research or drafting of the corresponding supplement. However, as newly assigned counsel, the undersigned has completed a review of the entire record (approximately 2,000 pages) and all corresponding decisions in this case.
- 4) *United States v. Kelnhofer*. This appellant intends to file a petition and corresponding supplement to the CAAF. The petition and supplement are on 9 January 2025. Undersigned counsel has not begun research or drafting.

In addition, the following cases before this Court have priority over this case:

1. *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. Undersigned counsel completed a review of the record and completed a draft assignments of error. That draft is now with civilian co-counsel for final review.
2. *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. Undersigned counsel has completed a review of the entire

record, identified six potential issues, and has completed drafting of four of those issues. This Court denied, in part, an enlargement of time for this case, requiring undersigned counsel to turn his attention away from his CAAF related matters—which have statutory deadlines which cannot be extended—and focus on this case. The initial brief in this case is now due on 9 December 2024.

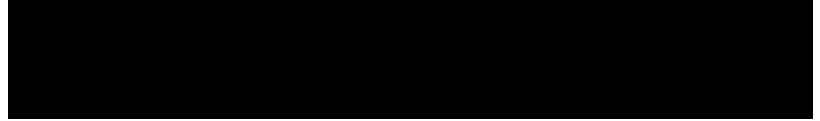
3. *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has not begun a review of this case.
4. *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages.
5. *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant’s case. An enlargement of time is necessary to allow counsel time to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Additionally, undersigned counsel provided Appellant with an update on the status of undersigned counsel’s progress on his case.³

³ Appellant provided a limited consent to disclose this attorney-client privileged communication.

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

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 6 December 2024.

Respectfully submitted,



TREVOR N. WARD, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

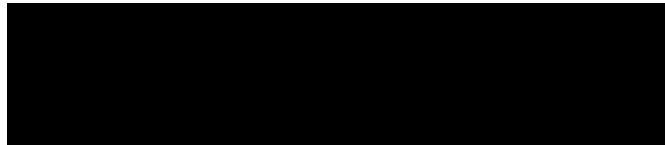
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman (E-2)	)	ACM 24026
JOSHUA M. HUPP, USAF,)	
<i>Appellant.</i>	)	Panel No.2
)	

**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 10 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

“clear in this case that the date of docketing is to be used in calculations.”² But, the concern expressed by Appellant was not about what date to conduct calculations for purposes of *writing* the motion; after all, as has been the case since Appellant’s Motion for Enlargement of Time (First), Appellant has included calculations from *both* the date of docketing *and* receipt of the verbatim transcript. Rather, Appellant’s concern was about the trigger date from which to calculate the *filing* of enlargements. *See* Motion for Enlargement of Time (Fifth), at 1 n.2; *cf.* Order, *United States v. Norris*, dated 6 December 2024 (“[T]he court deems it necessary to correct a misunderstanding of law reflected in Appellant’s motion. Appellant appears to confuse the ‘triggering date’ for the Appellate brief filing deadlines. . . . [T]his Court’s Rules . . . provides that the applicable triggering date is: ‘the number of days that will have elapsed since docketing.’”)

On 20 December 2024, this Court granted a reconsideration of the above referenced order in *Norris*, stating that the Joint Rules provide that “As soon as practicable after the filing of a Notice of Appeal, the [G]overnment shall provide the Court a complete record, including a verbatim transcript. . . . An appellant’s brief shall be filed no later than 60 days thereafter.” Order on Reconsideration, *United States v. Norris*, dated 20 December 2024, at 2 (quoting Jt. Crim. App. R. 18(d)(2)) (alteration in original). This seems to clarify that the trigger date for direct appeal *filings* is the date of receipt of the verbatim transcript. As such, this filing is made within the appropriate timeframe (i.e., calculated from the date of receipt of the verbatim transcript). Should this Court disagree, Appellant requests this Court clarify the trigger date for filing direct appeal briefs and enlargements.

² Confusingly, though, this Court did not deny the motion as “out of time,” which would be expected if the triggering date was the date of docketing, not the date of receipt of the verbatim transcript.

On 14 September 2023 at Yokota Air Base, Japan, Appellant was tried by a special court-martial consisting of a military judge sitting alone. R. at 1, 8. Consistent with his pleas, R. at 10, Appellant was convicted of one charge and specification of broadcast of an intimate visual image, in violation of Article 117a, Uniform Code of Military Justice (UCMJ), and one charge and two specifications of assault consummated by a battery, in violation of Article 128, UCMJ. R. at 97. Pursuant to a plea agreement, R. at 87, the Government withdrew and dismissed, with prejudice, one charge and two specifications of abusive sexual contact, in violation of Article 120, UCMJ, and one charge and two specifications of indecent recording, in violation of Article 120c, UCMJ. R. at 96, 152. The military judge sentenced Appellant to confinement for thirty days, reduction to the pay grade of E-1, and a reprimand. R. at 151-52. The convening authority took no action with regard to the findings or sentence. Record of Trial (ROT), Vol. 1, Convening Authority Decision on Action – *United States v. Amn Joshua M. Hupp*. Appellant is not confined.

The ROT is two volumes, consisting of four prosecution exhibits, eight defense exhibits, four appellate exhibits, and one court exhibit. The transcript is 153 pages.

Counsel is currently assigned 26 cases; 18 cases are pending initial AOE's before this Court. One case before the United States Supreme Court takes priority over this case: *United States v. Nestor*. Undersigned counsel—in coordination with counsel in *United States v. Wells*, the parent case—are conducting research in preparation for filing a writ petition on 21 February 2024.

Further, three cases before the Court of Appeals for the Armed Forces (CAAF) have priority over this case:

- 1) *United States v. Valentin-Andino*. Filing is complete in this case, but oral argument is scheduled for 14 January 2025. Undersigned counsel completed one moot argument session, with two additional moots scheduled this week.

- 2) *United States v. Pulley*. The supplement brief is due to the CAAF on 16 January 2025. Undersigned counsel is drafting the four identified errors presently.
- 3) *United States v. Kelnhofer*. This appellant intends to file a petition and corresponding supplement to the CAAF. The petition is due on 9 January 2025. The supplement brief is likely to be due on 30 January 2025. Undersigned counsel has not begun research or drafting.

In addition, the following cases before this Court have priority over this case:

1. *United States v. Moreno*, ACM 40511 – The record of trial is six volumes, consisting of 59 appellate exhibits, 12 prosecution exhibits, and seven defense exhibits; the transcript is 531 pages. An initial assignments of error brief was filed with this Court last night, 6 January 2025. The Government’s answer is due on 5 February 2025, with any reply due on 12 February 2025.
2. *United States v. Gibbs*, ACM 40523 – The record of trial is seven volumes, consisting of 40 appellate exhibits, 26 prosecution exhibits, 11 defense exhibits, and one court exhibit; the transcript is 1,084 pages. Undersigned counsel filed an initial assignments of error brief with this Court on 9 December 2024, with the Government’s answer due tomorrow, 8 January 2025. The reply brief will be due on 15 January 2025, but undersigned counsel will likely seek an enlargement based on deadlines at the CAAF and oral argument at the same.
3. *United States v. Evangelista*, ACM 40531 – The record of trial is 10 volumes, consisting of 56 appellate exhibits, 18 prosecution exhibits, 12 defense exhibits, and one court exhibit; the transcript is 1,439 pages. Undersigned counsel has reviewed approximately 200 pages of this case.

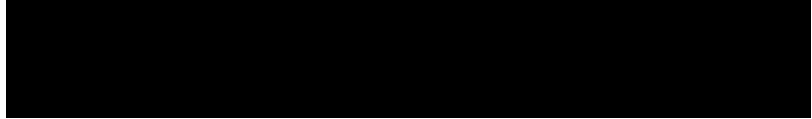
4. *United States v. Barlow*, ACM 40552 – The record of trial is four volumes, consisting of six prosecution exhibits, nine defense exhibits, 16 appellate exhibits, and two court exhibits; the transcript is 338 pages. Undersigned counsel has not completed a review of this case.
5. *United States v. Tyson*, ACM 40612 – The record of trial is an electronic record consisting of 924 pages. There are four prosecution exhibits, four defense exhibits, and 11 appellate exhibits. The transcript is 92 pages. Undersigned counsel has not completed a review of this case.

Through no fault of Appellant, undersigned counsel has been unable to complete his review and prepare a brief of Appellant's case. An enlargement of time is necessary to allow counsel time to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised of his right to a timely appeal. Appellant was advised of the request for this enlargement of time. Appellant has provided a limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement. Additionally, undersigned counsel provided Appellant with an update on the status of undersigned counsel's progress on his case.³

³ Appellant provided a limited consent to disclose this attorney-client privileged communication.

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

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

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 January 2025.

Respectfully submitted,



TREVOR N. WARD, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
United States Air Force
(240) 612-2807

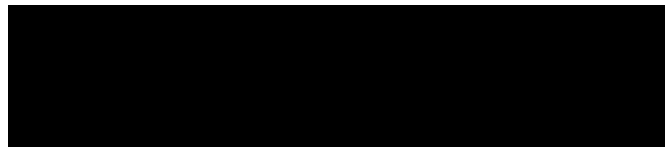
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
)	
Airman (E-2)	)	ACM 24026
JOSHUA M. HUPP, USAF,)	
<i>Appellant.</i>	)	Panel No.2
)	

**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 10 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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION TO WITHDRAW FROM
<i>Appellee,</i>	)	APPELLATE REVIEW AND
	)	ATTACH
v.)	
	)	Before Panel No. 2
Airman (E-2))	
JOSHUA M. HUPP,	)	No. ACM 24026
United States Air Force)	
<i>Appellant</i>	)	31 January 2025
)	

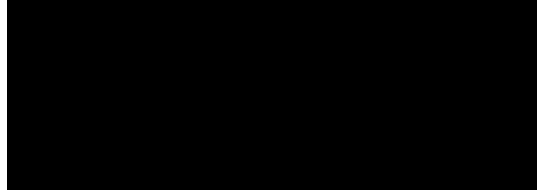
**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 16 and 23.3(i) 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, Airman Joshua M. Hupp, Appellant, moves to withdraw his case from appellate review. Appellant has fully consulted with Major Jennifer Harrington, 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), the undersigned counsel asks this Court to attach the eight-page document appended to this pleading to the record of this proceeding. The document is Appellant's completed Department of Defense Form 2230, *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 reference 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, Appellant respectfully requests this Honorable Court to grant this motion to withdraw from appellate review, and to grant this request to attach matters to the record.

Respectfully Submitted,



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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via electronic mail to the Court and served on the Government Trial and Appellate Operations Division on 31 January 2025.



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