

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

UNITED STATES)	No. ACM 40607
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Cody L. KINDRED)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

Appellant's case was docketed with this court on 3 May 2024. On 24 June 2024, 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 27th day of June, 2024,

ORDERED:

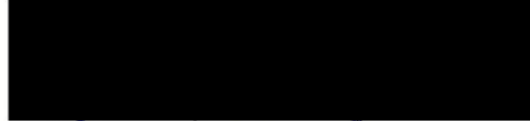
Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **31 August 2024**.

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	)	MOTION FOR ENLARGEMENT OF
	)	TIME (FIRST)
)	
v.	)	Before Panel No. 3
)	
Airman Basic (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	24 June 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)(2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his 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 **31 August 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

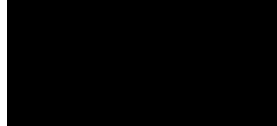


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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 24 June 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF
Appellate Defense Counsel
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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.)	
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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, Out of Time.

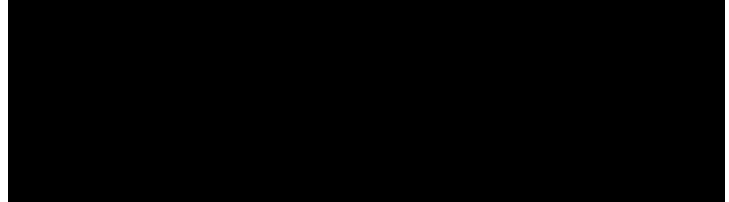
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 25 June 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	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SECOND)
)	
v.	)	Before Panel No. 3
)	
Airman Basic (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	21 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) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 September 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 110 days have elapsed. On the date requested, 150 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of Article 115, Uniform Code of Military Justice (UCMJ); three specifications of Article 120, UCMJ; one specification of Article 125, UCMJ; one specification of Article 128, UCMJ; six specifications of Article 128b; and one specification of Article 131b, UCMJ. *Entry of Judgment*, dated 29 December 2023. The military judge sentenced Appellant to a reduction to the rank of E-1, 20 years and three months of confinement, and a dishonorable discharge. *Id.* The military judge granted 312 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, dated 4 December 2023.

The trial transcript is 1,191 pages long comprised of 36 prosecution exhibits, three defense exhibits, 43 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

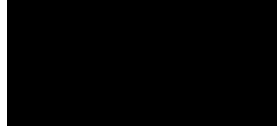


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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 21 August 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF
Appellate Defense Counsel
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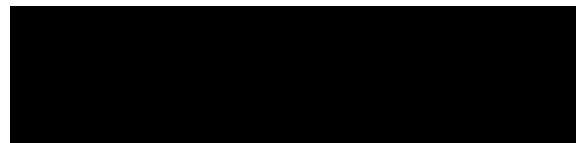
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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.

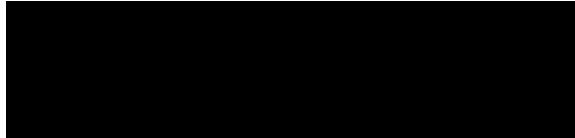
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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, to Civilian Defense Counsel, and to the Air Force Appellate Defense Division on 21 August 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (THIRD)
)	
v.	)	Before Panel No. 3
)	
Airman Basic (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	20 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) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **30 October 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of Article 115, Uniform Code of Military Justice (UCMJ); three specifications of Article 120, UCMJ; one specification of Article 125, UCMJ; one specification of Article 128, UCMJ; six specifications of Article 128b; and one specification of Article 131b, UCMJ. *Entry of Judgment*, dated 29 December 2023. The military judge sentenced Appellant to a reduction to the rank of E-1, 20 years and three months of confinement, and a dishonorable discharge. *Id.* The military judge granted 312 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, dated 4 December 2023.

The trial transcript is 1,191 pages long comprised of 36 prosecution exhibits, three defense exhibits, 43 appellate exhibits, and two court exhibits. Appellant is currently confined.

Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

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 Appellate Government Division on 20 September 2024.

Respectfully submitted,



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Appellate Defense Counsel
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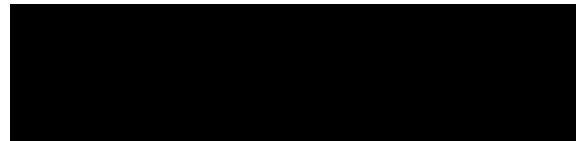
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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 24 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	)	MOTION FOR ENLARGEMENT OF
<i>Appellee</i>	)	TIME (FOURTH)
)	
v.	)	Before Panel No. 3
)	
Airman Basic (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	18 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) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 November 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 168 days have elapsed. On the date requested, 210 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of Article 115, Uniform Code of Military Justice (UCMJ); three specifications of Article 120, UCMJ; one specification of Article 125, UCMJ; one specification of Article 128, UCMJ; six specifications of Article 128b; and one specification of Article 131b, UCMJ. *Entry of Judgment*, dated 29 December 2023. The military judge sentenced Appellant to a reduction to the rank of E-1, 20 years and three months of confinement, and a dishonorable discharge. *Id.* The military judge granted 312 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, dated 4 December 2023.

The trial transcript is 1,191 pages long comprised of 36 prosecution exhibits, three defense exhibits, 43 appellate exhibits, and two court exhibits. Appellant is currently confined.

Undersigned counsel is currently assigned 17 cases, with 8 initial briefs pending before this Court. Through no fault of Appellant, undersigned defense counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow military appellate defense counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing EOT 3 in this case, undersigned counsel filed the Supplement to the Petition for Grant of Review in *United States v. Holmes* (Misc. Dkt. No. 2024-1, USCA Dkt. No. 24-0224/AF) with the Court of Appeals for the Armed Forces (CAAF); and the Reply Brief in *United States v. Sherman* (ACM 40486) with this Court. Undersigned counsel also prepared for and argued on behalf of the appellant in *United States v. Greene-Watson* (ACM 40293, USCA Dkt. No. 24-0096/AF) at the outreach oral argument with the CAAF on 10 October 2024.

Of note, the family day/Indigenous Peoples' Day was 11-14 October. Undersigned counsel was also on unexpected family leave 24-27 September 2024. Currently, undersigned counsel is working on the Reply Brief in *Holmes* due to the CAAF on 22 October 2024. Then, undersigned counsel will turn to the Joint Appendix and Grant Brief in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF), which is due to the CAAF on 12 November 2024. Additionally, the petition for certiorari in *United States v. Guihama* (ACM 40039) is also due to the Supreme Court of the United States (SCOTUS) on 12 November 2024 absent a motion for an EOT.

This case is currently undersigned counsel's sixth priority before this Court. Undersigned counsel has not begun review of the record. The following cases before this Court have priority over the present case:

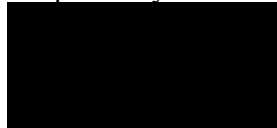
1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Of note, this case was previously moved up in priority given civilian appellate defense counsel's availability to work this case, however, that may shift given her current availability.
2. *United States v. Clark* (ACM 40540): The trial transcript is 1,579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits. On 30 April 2024, this Court granted in part appellant's Consent Motion to Examine Sealed Material and Transmit to Civilian Counsel. Military appellate defense counsel has since transmitted the sealed material to civilian counsel pursuant to this Court's Order.
3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours.

4. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit.
5. *United States v. Echaluse* (ACM 24027): The electronic record of trial is 1094 pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits.

Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF
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Air Force Appellate Defense Division
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Office: (240) 612-4772
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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 Appellate Government Division on 18 October 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF
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Air Force Appellate Defense Division
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Email: heather.bruha@us.af.mil

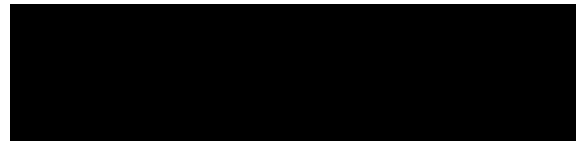
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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.

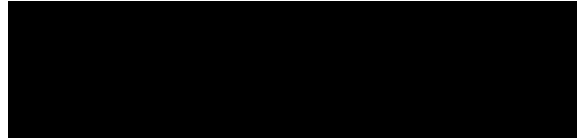
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 21 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	)	MOTION FOR ENLARGEMENT OF
	)	TIME (FIFTH)
)	
v.	)	Before Panel No. 3
)	
Airman Basic (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	19 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) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **29 December 2024**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 200 days have elapsed. On the date requested, 240 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of Article 115, Uniform Code of Military Justice (UCMJ); three specifications of Article 120, UCMJ; one specification of Article 125, UCMJ; one specification of Article 128, UCMJ; six specifications of Article 128b; and one specification of Article 131b, UCMJ. *Entry of Judgment*, dated 29 December 2023. The military judge sentenced Appellant to a reduction to the rank of E-1, 20 years and three months of confinement, and a dishonorable discharge. *Id.* The military judge granted 312 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, dated 4 December 2023.

The trial transcript is 1,191 pages long comprised of 36 prosecution exhibits, three defense exhibits, 43 appellate exhibits, and two court exhibits. Appellant is currently confined.

Undersigned counsel is currently assigned 16 cases, with 8 initial briefs pending before this Court. Through no fault of Appellant, undersigned defense counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow military appellate defense counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing EOT 4 in this case, undersigned counsel filed a Reply Brief in *United States v. Holmes* (Misc. Dkt. No. 2024-1, USCA Dkt. No. 24-0224/AF) with the Court of Appeals for the Armed Forces (CAAF); a Motion for an Extension of Time to file the Petition for Certiorari in *United States v. Guihama* (ACM 40039) with the Supreme Court of the United States (SCOTUS); the Joint Appendix (JA)¹ and Grant Brief in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) with the CAAF; and a Motion to Withdraw from Appellate Review and Motion to Attach in *United States v. Harmon* (ACM S32785) with this Court. Motions to withdraw from appellate review require appellant counsel to conduct a review of the record and advise the appellant. Undersigned counsel also spent approximately 4 hours reviewing the opinion in *United States v. Martell* (ACM 40501) and applicable case law, consulting with civilian appellate defense counsel, and advising the appellant in *Martell* on a potential motion for reconsideration with this Court or petition for grant of review with the CAAF. On 19 November 2024, undersigned counsel also copied and transmitted sealed material in *United States v. Soloshenko* (ACM 40581) to civilian appellate

¹ Undersigned counsel asked Government appellate counsel to assist in pulling the portions of the JA it requested for compiling, but Government appellate counsel refused stating the rules make clear the appellant alone is responsible for the JA including the parts (and redactions) the appellee requests. As such, while titled "Joint," the appellant was solely responsible for the JA.

defense counsel pursuant to this Court's order. Undersigned counsel identified a potential issue with the sealed material and filed a subsequent consent motion to view and transmit sealed material in the case on the same day.

Of note, undersigned counsel had an emergency medical issue² the week of 20 October 2024, which impacted her ability to perform her job. Additionally, the Veterans Day holiday and family day were 8-11 November 2024. Undersigned counsel was also occupied from noon until the end of the duty day on 13 November 2024 with a medical appointment for her son.³ And as a single parent, undersigned counsel had to telework with her five-year-old for two days during this timeframe since there was no school and no aftercare available. Since filing EOT 4 in this case, undersigned counsel prepared for and participated as a moot judge in one moot argument and additional mentoring (equaling 4+ hours), completed three peer reviews, and completed approximately 7 hours of virtual training/certifications.

This case is currently undersigned counsel's sixth priority before this Court. Undersigned counsel has not begun review of the record. The following cases before this Court have priority over the present case:

1. *United States v. Clark* (ACM 40540): The trial transcript is 1,579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits. On 30 April 2024, this Court granted in part appellant's Consent Motion to Examine Sealed Material and Transmit to Civilian Counsel. Undersigned counsel transmitted the

² Undersigned counsel is willing to disclose more details in a status conference should this Court be inclined to deny this EOT request, but not in this filing as it is made public.

³ Undersigned counsel elects to not provide further details given all filings are made public. However, further details may be shared in a status conference should this Court be inclined to deny this EOT request.

sealed material to civilian counsel pursuant to this Court's original order. However, since reviewing the record, undersigned counsel identified two additional exhibits which were sealed and filed a consent motion to view and transmit on 19 November 2024. Undersigned counsel has finished review of 9 of the 13 volumes of the record (the remaining volumes contain the transcript). Undersigned counsel has reviewed approximately 200 pages of the 1,579-page transcript and has identified two potential AOE's she will be drafting in addition to the six anticipated to be drafted by civilian appellate defense counsel. Undersigned counsel has yet to receive a draft of the AOE's from civilian appellate defense counsel due to the delay caused by her need to work on an emergent issue for a different client.

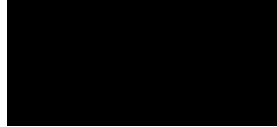
2. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Undersigned counsel has reviewed approximately two of the four volumes in the case but has only reviewed about 50 pages of the 1,040-page transcript. Undersigned counsel was previously working on this case and on a request to the Government to consent on a motion to view sealed material but was redirected to the *Clark* case above given this Court's denial of EOT 10 in that case. Undersigned counsel hopes to file a motion to view sealed material in *Arizpe* before the end of the week to ensure she can continue reviewing *Arizpe* as next in line after *Clark*. Another EOT (for at least a partial amount of time) in *Arizpe* will likely be needed given the reprioritization required by this Court and the need to get the AOE's through necessary reviews prior to filing.

3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Civilian appellate defense counsel and undersigned counsel have been consulting on a potential motion to bifurcate and motion for leave to file an AOE separately, but nothing is yet ready for filing.
4. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit. As noted above, undersigned counsel copied and transmitted the sealed material to civilian appellate defense counsel granted in this Court's original order but has since filed an additional motion after identifying a potential issue with an exhibit identified as sealed in the Court's hard copy of the record.
5. *United States v. Echaluse* (ACM 24027): The electronic record of trial is 1,094-pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits.

Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



HEATHER M. BRUHA, 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 Appellate Government Division on 19 November 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF
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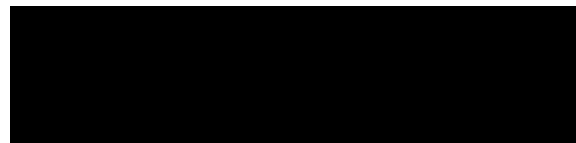
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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.

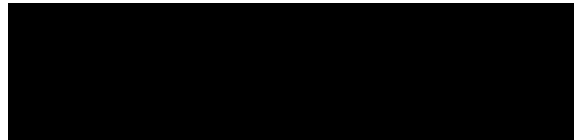
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 21 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	)	MOTION FOR ENLARGEMENT OF
	)	TIME (SIXTH)
)	
v.	)	Before Panel No. 3
)	
Airman Basic (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	19 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) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **28 January 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of Article 115, Uniform Code of Military Justice (UCMJ); three specifications of Article 120, UCMJ; one specification of Article 125, UCMJ; one specification of Article 128, UCMJ; six specifications of Article 128b; and one specification of Article 131b, UCMJ. *Entry of Judgment*, dated 29 December 2023. The military judge sentenced Appellant to a reduction to the rank of E-1, 20 years and three months of confinement, and a dishonorable discharge. *Id.* The military judge granted 312 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, dated 4 December 2023.

The trial transcript is 1,191 pages long comprised of 36 prosecution exhibits, three defense exhibits, 43 appellate exhibits, and two court exhibits. Appellant is currently confined.

Undersigned counsel is currently assigned 14 cases, with 6 initial briefs pending before this Court. Through no fault of Appellant, undersigned defense counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing EOT 5 in this case, undersigned counsel filed the Brief on Behalf of Appellant in *United States v. Clark* (ACM 40540) with this Court; a Petition for Grant of Review and Motion for an Extension of Time to File the Supplement Separately in *United States v. Martell* (ACM 40501) with the Court of Appeals for the Armed Forces (CAAF), and submitted the Petition for Writ of Certiorari in *United States v. Guihama* (ACM 40039, USCA Dkt. No. 23-0085/AF) to the printer on 16 December 2024 which is due to the Supreme Court of the United States (SCOTUS) on 11 January 2025.

Of note, the Court and undersigned counsel's office are closed 24-26 December 2024 due to the President's Executive Order, a federal holiday, and a family day and closed 1-2 January 2025 due to a federal holiday and family day. Since filing EOT 5 in this case, undersigned counsel prepared for and participated as a moot judge in two moot arguments and attended one oral argument at the CAAF (equaling approximately 9 hours) and completed six peer reviews. Undersigned counsel is currently working on the Reply Brief in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) due to the CAAF next week. Undersigned counsel has also been working on the planning and preparations for a *DuBay*¹ hearing ordered in *United States v. Sherman*, (ACM 40486) by this Court.

¹ *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

This case is currently undersigned counsel's fifth priority before this Court. Undersigned counsel has not begun review of the record. The following cases before this Court have priority over the present case:

1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Undersigned counsel has reviewed physical copy of the four volume record of trial and is finishing review of the transcript while conducting research into the four potential issues identified so far. Undersigned counsel still needs to review the Board of Inquiry (BOI) transcript for two potential issues related to Unlawful Command Influence (UCI), continue conducting case law research, and conduct final consultation with the client on any other potential *Grostepon*² issues. The Brief on Behalf of Appellant is due 9 January 2025. The Supplement to the Petition for Grant of Review in *Martell* is also currently due to the CAAF on 6 January 2025.
2. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel will need another EOT in order to complete review of the record, work on the brief with civilian appellate defense counsel, and consult

² *United States v. Grostepon*, 12 M.J. 431 (C.M.A. 1992).

the client—especially given the *DuBay* hearing in *Sherman* is scheduled for the week of 27 January 2025.

3. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit. Undersigned counsel copied and transmitted the sealed material to civilian appellate defense counsel. Undersigned counsel has only reviewed the sealed material in the case thus far.
4. *United States v. Echaluse* (ACM 24027): The electronic record of trial is 1,094- pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits.

Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

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 Appellate Government Division on 19 December 2024.

Respectfully submitted,



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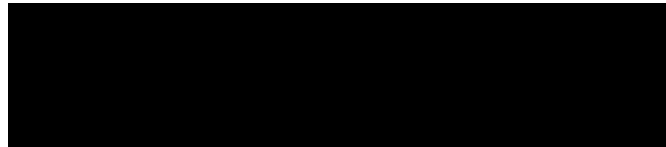
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

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

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

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



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 20 December 2024.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES)	MOTION FOR ENLARGEMENT OF
	)	TIME (SEVENTH)
)	
v.	)	Before Panel No. 3
)	
Airman Basic (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	16 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) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **27 February 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 258 days have elapsed. On the date requested, 300 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of Article 115, Uniform Code of Military Justice (UCMJ); three specifications of Article 120, UCMJ; one specification of Article 125, UCMJ; one specification of Article 128, UCMJ; six specifications of Article 128b; and one specification of Article 131b, UCMJ. *Entry of Judgment*, dated 29 December 2023. The military judge sentenced Appellant to a reduction to the rank of E-1, 20 years and three months of confinement, and a dishonorable discharge. *Id.* The military judge granted 312 days of pretrial confinement credit. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, dated 4 December 2023.

The trial transcript is 1,191 pages long comprised of 36 prosecution exhibits, three defense exhibits, 43 appellate exhibits, and two court exhibits. Appellant is currently confined.

Undersigned counsel is currently assigned 14 cases, with 5 initial briefs pending before this Court. Through no fault of Appellant, undersigned defense counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing EOT 6 in this case, undersigned counsel filed the Reply Brief in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) with the Court of Appeals for the Armed Forces (CAAF); delivered the Petition for Writ of Certiorari in *United States v. Guihama* (ACM 40039, USCA Dkt. No. 23-0085/AF) to the Supreme Court of the United States (SCOTUS); filed an Answer to the Government's motion to reconsider in *United States v. Hennessy* (ACM 40439) with this Court; filed a motion to strike portion of amicus curiae brief of LP and an opposition to amicus motion for oral argument in *Arroyo* with the CAAF; and filed the Brief on Behalf of Appellant in *United States v. Arizpe* (ACM 40507) with this Court.

Of note, the Court and undersigned counsel's office were closed 24-26 December 2024 due to the President's Executive Order, a federal holiday, and a family day; closed 1-2 January 2025 due to a federal holiday and family day; and closed 9 January 2025 due to the President's Executive Order. Undersigned counsel took leave 13-15 January 2025. Since filing EOT 6 in this case, undersigned counsel prepared for and participated as a moot judge in five moot arguments (equaling approximately 12 hours) and completed three peer reviews (equaling approximately 17 hours). Undersigned counsel has also been working on the planning and

preparations for a *DuBay*¹ hearing ordered in *United States v. Sherman*, (ACM 40486) by this Court, which is currently scheduled for the week of 27 January 2025. Undersigned counsel will also file the Supplement to the Petition for Grant of Review in *United States v. Martell* (ACM 40501) with the CAAF by 21 January 2025. Additionally, undersigned counsel will have Reply Briefs due in *United States v. Clark* (ACM 40540) (estimated 3 February 2025) and *Arizpe* (estimated 20 February 2025) and Oral Argument at the CAAF in *Arroyo* (scheduled 25 February 2025).

This case is currently undersigned counsel's fourth priority before this Court. Undersigned counsel has not begun review of the record. The following cases before this Court have priority over the present case:

1. *United States v. Soloshenko* (ACM 40581): The electronic record of trial is 1,173 pages long comprised of seven prosecution exhibits, two defense exhibits, 27 appellate exhibits, and one court exhibit. Undersigned counsel copied and transmitted the sealed material to civilian appellate defense counsel. Undersigned counsel has reviewed the sealed material and is continuing review of the record. This case has moved up in priority given civilian counsel's availability.
2. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has reviewed the sealed evidence in this case.

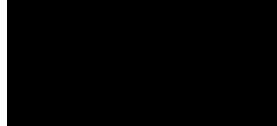
¹ *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

3. *United States v. Echaluse* (ACM 24027): The electronic record of trial is 1,094- pages long containing three prosecution exhibits, 34 defense exhibit, 16 appellate exhibits, and zero court exhibits.

Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

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 Appellate Government Division on 16 January 2025.

Respectfully submitted,



HEATHER M. BRUHA, 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
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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 a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two-thirds of the 18 month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not begun review of the record of trial at this late stage of the appellate process.

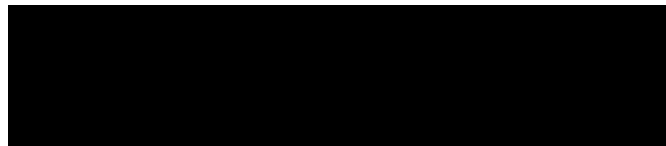
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 21 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 40607
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Cody L. KINDRED)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 14 February 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Eighth) “request[ing] an enlargement for a period of 30 days, which by operation of Rule 15 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals will end on Monday, **31 March 2025.**” The Government opposes the motion.

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 21st day of February, 2025,

ORDERED:

Appellant’s Motion for Enlargement of Time (Eighth) for a period of 30 days is **GRANTED** until **29 March 2025.**

Further requests by Appellant for enlargements 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	)	MOTION FOR ENLARGEMENT OF
	)	TIME (EIGHTH)
)	
v.	)	Before Panel No. 3
)	
Airman (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
United States Air Force	)	14 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) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file a brief on behalf of appellant. Appellant requests an enlargement for a period of 30 days, which by operation of Rule 15 of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals will end on Monday, **31 March 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 287 days have elapsed. On the date requested, 332 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of violating Article 115, Uniform Code of Military Justice (UCMJ); three specifications of violating Article 120, UCMJ; one specification of violating Article 125, UCMJ; one specification of violating Article 128, UCMJ; six specifications of violating Article 128b, UCMJ; and one specification of violating Article 131b, UCMJ. *Entry of Judgment* (29 Dec. 2023). The military judge sentenced Appellant to a reduction to the rank of E-1, twenty years and three months of confinement, and a dishonorable discharge. *Id.* The military judge granted 312 days of pretrial confinement credit.

Id. The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action* (4 Dec. 2023).

The trial transcript is 1,191 pages long. The record includes thirty-six prosecution exhibits, three defense exhibits, forty-three appellate exhibits, and two court exhibits. Appellant is currently confined.

The undersigned government-employed civilian counsel is currently assigned to six cases pending initial briefing before this Court and one case pending filing of a supplement with the United States Court of Appeals for the Armed Forces. Through no fault of Appellant, undersigned defense counsel has been working on other assigned matters and has yet to review Appellant's record of trial.

This case is currently the undersigned government-employed civilian counsel's third priority before this Court. Although the undersigned government-employed civilian counsel has not begun to review the record, he is confident that he will be able to review at least the unsealed portions of the record of trial during the requested enlargement period. The following cases before this Court have priority over the present case:

1. *United States v. Slayton* (ACM 40583): The undersigned government-employed civilian counsel has completely reviewed the record in this fully contested Article 120 case and is currently preparing a brief on appellant's behalf.
2. *United States v. Roberts* (ACM 40608): The undersigned government-employed civilian counsel has reviewed more than 1,300 pages of the 1,627-page transcript of this fully contested Article 120b and Article 120c case and has identified issues requiring briefing.

The undersigned government-employed civilian counsel is also assigned to a case pending a supplement at the Court of Appeals for the Armed Forces with priority above this case (*United States v. Ericson*, USCA Dkt. No. 25-0096/AF). His participation in that case is caused by the extraordinary circumstance of the appellant's detailed military appellate defense counsel (a Reservist) being prohibited from performing military duty in light of the geographical distance between her home of record and assigned duty station at Joint Base Andrews, Maryland, and her status as a federal government employee in her civilian capacity, which prevents her from representing the appellant other than in a military duty status. *See* 18 U.S.C. § 205.

Undersigned military appellate defense counsel is currently assigned fourteen cases, with three initial briefs pending before this Court. Through no fault of Appellant, undersigned defense counsel has been working on other assigned matters and has yet to review of Appellant's record of trial. Of note, the Court and undersigned counsel's office were closed 17-20 January 2025 and will be closed 14-17 February 2025 due to federal holidays and family days. Since filing EOT 7 in this case, undersigned military appellate defense counsel prepared for and participated as a moot judge in three moot arguments (equaling approximately 8 hours) and completed two peer reviews (equaling approximately 5 hours). Additionally, undersigned appellate military defense counsel represented the appellant at a *DuBay*¹ hearing ordered in *United States v. Sherman*, (ACM 40486) by this Court; filed the Supplement to the Petition for Grant of Review in *United States v. Martell* (ACM 40501) with the Court of Appeals for the Armed Forces (CAAF); and the Brief on Behalf of Appellant in *United States v. Soloshenko* (ACM 40581) with this Court.

This case is currently the undersigned military appellate defense counsel's third priority before this Court. The following cases before this Court have priority over the present case:

¹ *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967).

1. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing twenty-nine prosecution exhibits, sixteen defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is sixty-nine pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Both counsel for the appellant have reviewed the sealed evidence in this case. Civilian appellate defense counsel is completing her review of the rest of the record. Undersigned military appellate defense counsel has reviewed the record of trial not consisting of the transcript, started review of the transcript, and identified nine potential issues in the case. Undersigned military appellate defense counsel has paused review of the record to prepare for oral argument at the CAAF on 25 February 2025 in *United States v. Arroyo* (ACM 40321 (f rev)). The *Cooley* brief is currently due 6 March 2025. Undersigned military appellate defense counsel also has reply briefs due to this Court in *United States v. Arizpe* (ACM 40507) due 20 February 2025 and *United States v. Clark* (ACM 40540) due 5 March 2025.
2. *United States v. Echaluse* (ACM 24027): The electronic record of trial is 1,094-pages long containing three prosecution exhibits, thirty-four defense exhibit, sixteen appellate exhibits, and zero court exhibits.

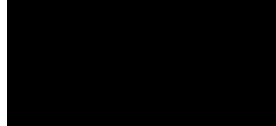
Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



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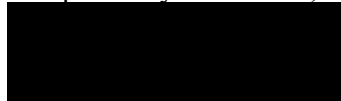


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Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: heather.bruha@us.af.mil

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 Appellate Government Division on 14 February 2025.

Respectfully submitted,



Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

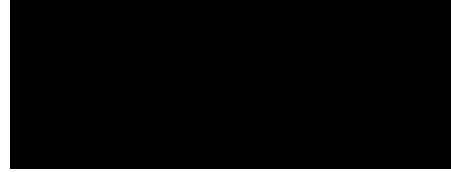
UNITED STATES,)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, USAF,)	
<i>Appellant.</i>	)	Panel No. 3
)	

**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 circumstance, it should not take any appellant nearly a year to submit an Assignment of Error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 332 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. Appellant's counsel has also not completed review of the record of trial at this late stage of the appellate process.

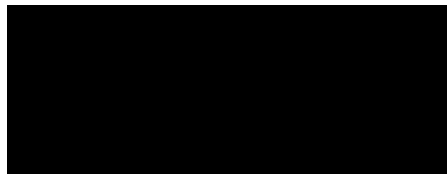
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



THOMAS J. ALFORD, Lt Col, USAFR
Appellate Government Counsel
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 18 February 2025.



SAFR

Appellate Government Counsel
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 40607
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Cody L. KINDRED)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 17 March 2025, counsel for Appellant submitted a Consent Motion to Examine Sealed Material, requesting both parties be allowed to examine Appellate Exhibits I–VIII, XVII–XXI, XXVI¹, and portions of the verbatim transcript at pages 14–76, 114–157, and 379–381 related to closed Article 39(a), UCMJ, sessions convened pursuant to Mil. R. Evid. 412. The military judge ordered all of those exhibits and transcript portions sealed in the record of trial. The exhibits were reviewed or presented by the parties at trial, and the closed Article 39(a), UCMJ, sessions were attended by the parties at trial. 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 19th day of March, 2025,

¹ In its review of the record pertinent to this motion, the court notes that Appellate Exhibit VI is misidentified in the exhibits list in volume 2 of the record of trial. Whereas the Exhibits List recites Appellate Exhibit VI as an 8-page document dated 29 March 2023, in actuality, Appellate Exhibit VI is a 7-page document dated 23 June 2023. Our review of the sealed trial transcript confirms that Appellate Exhibit VI as it appears in the record of trial is the same Appellate Exhibit VI entered into the record during the closed session Article 39(a), UCMJ, session at trial.

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Appellate Exhibits I–VIII, XVII–XXI, and XXVI, and trial transcript pages 14–76, 114–157, and 379–381**, 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



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S CONSENT MOTION
<i>Appellee</i>	)	TO EXAMINE SEALED
	)	MATERIAL
v.)	
	)	Before Panel No. 3
Airman (E-2))	
CODY L. KINDRED,	)	No. ACM 40607
United States Air Force)	
<i>Appellant</i>	)	17 March 2025

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

Pursuant to Rules 3.1(c) and 23.3(f) of this Court’s Rules of Practice and Procedure and Rule for Courts-Martial 1113(b)(3)(B)(i), Appellant moves for both parties to examine the following sealed material:

- Appellate Exhibit I (Defense Notice to Offer Evidence under M.R.E. 412)
- Appellate Exhibit II (Defense Motion to Offer Evidence under M.R.E. 412)
- Appellate Exhibit III (Government Response to Defense Motion to Admit Evidence under M.R.E. 412)
- Appellate Exhibit IV (Victim’s Counsel Response to Defense Notice to Offer Evidence under M.R.E. 412)
- Appellate Exhibit V (Defense Notice to Offer Evidence under M.R.E. 412)
- Appellate Exhibit VI (Defense Notice to Offer Evidence under M.R.E. 412)
- Appellate Exhibit VII (Government Response to Defense Notice to Offer Evidence under M.R.E. 412)
- Appellate Exhibit VIII (VC Response to Defense Notice to Offer Evidence under M.R.E. 412)
- Appellate Exhibit XVII (Ruling: Defense Motion to Admit M.R.E. 412 Evidence)
- Appellate Exhibit XVIII (Second Notice & Motion to Offer M.R.E. 412 Evidence)
- Appellate Exhibit XIX (Government Response to Defense Motion to Admit Evidence under M.R.E. 412)
- Appellate Exhibit XX (VC Response to Second Notice & Motion to Offer M.R.E. 412 Evidence)
- Appellate Exhibit XXI (Report of Investigation, dated 9 June 2022)
- Appellate Exhibit XXVI (Ruling: Defense Motion to Admit M.R.E. 412 Evidence)
- Trial transcript pages 14 through 76, 114 through 157, and 379 through 381

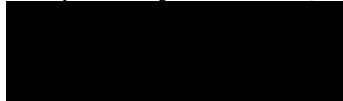
All parties participated in the sealed Article 39(a) sessions that are the subjects of the sealed trial transcript pages. *See* Trial Tr. at 13, 378. Given the nature of the sealed exhibits, which concerned litigation under Military Rule of Evidence 412, it is likely that all parties at trial had access to the exhibits. However, Appellate Exhibits I through VIII and XVIII through XXI were apparently marked during closed proceedings. Accordingly, without access to the sealed portions of the trial transcript, it is impossible to know with certainty whether all parties had access to those documents at the trial level. Both parties had access to Appellate Exhibits XVII and XXVI at the trial level. Trial Tr. at 111, 375.

Appellate defense counsel's review of the sealed materials is necessary to conduct a complete review of the record of trial and to be able to advocate competently on Appellant's behalf.

Appellate Government Counsel have been consulted about this motion and consent to the relief sought by Appellant.

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

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770

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 17 March 2025. `

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES)	No. ACM 40607
<i>Appellee</i>)	
)	
v.)	
	)	ORDER
Cody L. KINDRED)	
Airman (E-2))	
U.S. Air Force)	
<i>Appellant</i>	)	Panel 3

On 21 March 2025, counsel for Appellant moved this court for leave to file a motion to access audio recordings of closed Article 39(a), UCMJ, 10 U.S.C. § 839(a), sessions, in the above-captioned case. The Government does not oppose the motion.

On 19 March 2025, this court granted a consent motion filed by Appellant for the parties to examine sealed appellate exhibits and verbatim transcript pages relating to closed Article 39(a), UCMJ, sessions convened pursuant to Mil. R. Evid. 412. Appellant avers in his current motion for leave to file that access to the audio recordings for those closed Article 39(a), UCMJ, sessions (to the extent not already implicitly embraced by the court’s prior order) is necessary because of an “irregularity” which Appellant’s counsel discovered in reviewing those sealed materials covered in the court’s prior order.*

The military judge ordered the audio recordings for the closed Article 39(a), UCMJ, sessions sealed in the record of trial. All parties attended the closed Article 39(a), UCMJ, sessions at trial.

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.).

* Appellant’s 21 March 2025 motion was captioned “Motion for Leave to File Motion for Access to Audio of Closed Article 39(a) Sessions.” The actual underlying motion was filed separately on 20 March 2025, and not combined with this motion as is permitted under Rule 18(d) of the Joint Rules of Appellate Procedures for Courts of Criminal Appeals. We accept the underlying motion, dated 20 March 2025, as part of Appellant’s 21 March 2025 motion.

The court finds Appellant has made a colorable showing that review of the requested 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 26th day of March, 2025,

ORDERED:

Appellant's Motion for Leave to File Motion for Access to Audio of Closed Article 39(a) Sessions, dated 21 March 2025, and the underlying motion of 20 March 2025, are **GRANTED**.

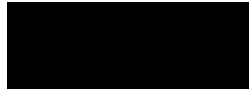
Appellate defense counsel and appellate government counsel may examine the audio recordings of the closed Article 39(a), UCMJ, sessions, subject to the following conditions:

To examine the sealed audio recordings, counsel will coordinate with the court.

No counsel granted access to the material may record, 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,	)	APPELLANT’S MOTION FOR
	)	LEAVE TO FILE MOTION FOR
	)	ACCESS TO AUDIO OF CLOSED
<i>Appellee</i>	)	ARTICLE 39(a) SESSIONS
v.)	
	)	Before Panel No. 3
Airman (E-2))	
CODY L. KINDRED,	)	No. ACM 40607
United States Air Force)	
<i>Appellant</i>	)	21 March 2025

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

COMES NOW Appellant, Airman Cody L. Kindred, by and through his undersigned counsel, and moves for leave to file his previously submitted motion for access to audio of closed Article 39(a) sessions.¹

This Court’s Rules appear to permit the filing of a motion to listen to audio of a closed Article 39(a) sessions without an accompanying motion for leave to file. Presumably, audio of a closed court-martial session is sealed. If so, a motion to listen to such a closed session falls directly within Rules 3.1(c)(2) and 23.3(f)(1), which permit counsel to file a motion to examine sealed materials.² Under Rule 23.3 of this Honorable Court’s Rules of Practice and Procedure, because two rules permit counsel to move to examine sealed portions of the record, there is no need to file a motion for leave to file such a motion.

To whatever extent use of the words “access to” in lieu of the synonymous “examine” in the underlying motion’s caption removes that motion from the scope of Rule 23.3’s “expressly

¹ Appellant’s counsel filed the underlying motion for access to audio of closed Article 39(a) sessions on 20 March 2025. On 21 March 2025, the Government indicated it does not oppose Appellant’s underlying motion. United States’ Response to Appellant’s Motion for Access to Closed Article 39(a) Sessions, *United States v. Kindred*, No. ACM 40607 (21 Mar. 2025).

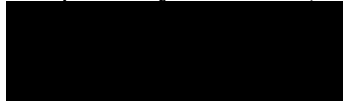
² Appellant’s underlying motion cited both Rule 3.1(c)(2) and Rule 23.3(f)(1).

authorized by these rules” provision, Appellant files this motion for leave to file the underlying motion. Rule 23.3 requires that a motion for leave to file set “forth the basis upon which the filing shall be permitted.” As noted in Appellant’s motion for access to audio of closed Article 39(a) sessions, a notation on page 31 of the trial transcript, which is sealed, suggests an irregularity that compels review of the recording of that portion of Appellant’s court-martial. Additionally, because a sound recording of the trial is a required portion of the record of trial, *see* Rule for Courts-Martial 1112(a), (b)(1), *Manual for Courts-Martial, United States* (2024 ed.) (hereinafter R.C.M.), Appellant’s counsel must review the sound recordings of all Article 39(a) sessions to evaluate whether the record is complete.

Consistent with Rule 23.3(f)(1), Appellant notes that counsel for both parties participated in the closed sessions that are the subject of the underlying motion. Accordingly, the material sought is governed by R.C.M. 1113(b)(3)(B)(i).

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

Respectfully submitted,




Dwight H. Sullivan
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770

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 Dwight H. Sullivan.

Dwight H. Sullivan
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770


IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	LEAVE TO FILE MOTION FOR
v.	)	ACCESS TO AUDIO OF CLOSED
	)	ARTICLE 39(a) SESSIONS
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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 does not oppose Appellant's Motion for Leave to File Motion for Access to Audio of Closed Article 39(a) Sessions.

WHEREFORE, the United States respectfully requests that this Court grant Appellant's 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 21 March 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION FOR
	)	ENLARGEMENT OF TIME (NINTH)
)	
v.	)	Before Panel No. 3
)	
Airman (E-2)	)	No. ACM 40607
CODY L. KINDRED,)	
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 23.3(m) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file a brief on behalf of appellant. Appellant requests an enlargement for a period of 30 days, which will end on **28 April 2025**. The record of trial was docketed with this Court on 3 May 2024. From the date of docketing to the present date, 322 days have elapsed. On the date requested, 360 days will have elapsed.

On 28 October 2023, at a general court-martial convened at Luke Air Force Base, Arizona, Appellant was found guilty, contrary to his pleas, of one specification of violating Article 115, Uniform Code of Military Justice (UCMJ); three specifications of violating Article 120, UCMJ; one specification of violating Article 125, UCMJ; one specification of violating Article 128, UCMJ; six specifications of violating Article 128b, UCMJ; and one specification of violating Article 131b, UCMJ. *Entry of Judgment* (29 Dec. 2023). The military judge sentenced Appellant to reduction to the rank of E-1, a total of twenty years and three months of confinement, forfeiture of all pay and allowances, and a dishonorable discharge. Trial Tr. at 1189–90. The military judge granted 312 days of pretrial confinement credit. *Id.* at 1190. The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action* (4 Dec. 2023).

The trial transcript is 1,191 pages long. The record includes thirty-six prosecution exhibits, three defense exhibits, forty-three appellate exhibits, and two court exhibits. Appellant is currently confined.

The undersigned government-employed civilian counsel is currently assigned to five cases pending initial briefing before this Court. The undersigned government-employed civilian counsel has read the entire transcript in this case, including the sealed portions of the transcript, and has identified issues requiring additional research and briefing. Additionally, upon reviewing the sealed transcript pages, the undersigned government-employed civilian counsel noted an irregularity that required him to file a motion for access to the audio of the closed Article 39(a) sessions. Through no fault of Appellant, the undersigned government-employed civilian counsel has not yet drafted a brief in Appellant's case. This case is his second-highest priority. The one case above this is *United States v. Roberts* (ACM 40608). The undersigned government-employed civilian counsel has reviewed the complete *Roberts* record, which includes a 1,627-page transcript of a fully contested Article 120b and Article 120c general court-martial. Like Appellant, Senior Airman Roberts is confined. The undersigned government-employed civilian counsel is in the process of drafting a brief in the *Roberts* case.

Undersigned military appellate defense counsel is currently assigned thirteen cases, with three initial briefs pending before this Court. Through no fault of Appellant, undersigned defense counsel has been working on other assigned matters and has yet to review Appellant's record of trial.

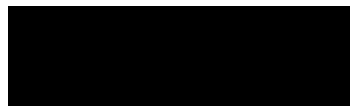
This case is currently the undersigned military appellate defense counsel's third priority before this Court. The following cases before this Court have priority over the present case:

1. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing twenty-nine prosecution exhibits, sixteen defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is sixty-nine pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Both counsel for the appellant have reviewed the evidence in this case and are completing the brief, which is due today.
2. *United States v. Echaluse* (ACM 24027): The electronic record of trial is 1,094-pages long containing three prosecution exhibits, thirty-four defense exhibit, sixteen appellate exhibits, and zero court exhibits.


Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case, the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
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Email: dwight.sullivan.1@us.af.mil




Heather M. Bruha, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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Email: heather.bruha@us.af.mil

CERTIFICATE OF FILING AND SERVICE

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Respectfully submitted,

A solid black rectangular box used to redact the signature of Dwight H. Sullivan.

Dwight H. Sullivan
Air Force Appellate Defense Division

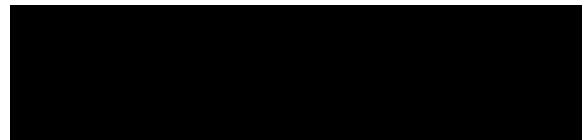
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	LEAVE TO FILE MOTION FOR
v.	)	ACCESS TO AUDIO OF CLOSED
	)	ARTICLE 39(a) SESSIONS
)	
Airman (E-2)	)	ACM 40607
CODY L. KINDRED, 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 does not oppose Appellant's Motion for Leave to File Motion for Access to Audio of Closed Article 39(a) Sessions.

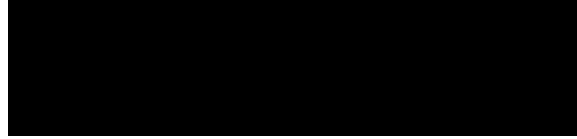
WHEREFORE, the United States respectfully requests that this Court grant Appellant's motion.



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 21 March 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION TO FILE
<i>Appellee,</i>	)	UNDER SEAL
)	
)	
v.	)	Before Panel No. 3
)	
Airman (E-2)	)	No. ACM 40607
Cody L. Kindred,)	
United States Air Force,)	
<i>Appellant.</i>	)	28 March 2025

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

COMES NOW Appellant, Airman Cody L. Kindred, by and through his undersigned counsel, and moves pursuant to Rule 23.3(o) of this Honorable Court’s Rules of Practice and Procedure to file under seal the redacted portions of Appellant’s accompanying motion for leave to file a motion to remand combined with the motion to remand.

Audio recordings corresponding to the first two days of Appellant’s general court-martial are missing from the record of trial. The second day’s proceedings included two closed Article 39(a) sessions to hear evidence on motions by the defense to admit evidence under Military Rule of Evidence 412. Trial Tr. at 14–54, 55–76. The transcripts of those closed Article 39(a) sessions are sealed. To establish why remand is appropriate to correct the record, it is necessary for Appellant’s motion to remand to refer to events that occurred during those closed Article 39(a) sessions as well as two sealed rulings by the military judge. This Court’s Rules provide that information derived from materials under seal “shall be separately filed in accordance with Rule 13.2(b).” A.F. Ct. Crim. App. R. 17.2(b). Accordingly, it is necessary to file under seal certain portions of Appellant’s motion for leave to file a motion to remand combined with the motion to remand. Appellant is electronically filing a redacted version of that motion that obscures the

portions derived from the closed proceedings and sealed rulings. In accordance with this Court's Rules, Appellant is filing a paper copy of the unredacted motion.

WHEREFORE, this Honorable Court should grant this motion.

Respectfully submitted,

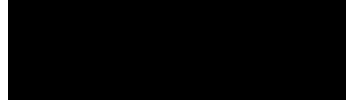


Dwight H. Sullivan
Appellate Defense Counsel
Air Force Appellate Defense Division
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Email: dwight.sullivan.1@us.af.mil

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 28 March 2025.

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR LEAVE TO FILE AND MOTION TO REMAND FOR CORRECTION OF THE RECORD
)	
<i>Appellee,</i>)	
)	
)	
v.	)	Before Panel No. 3
)	
Airman (E-2)	)	No. ACM 40607
Cody L. Kindred,)	
United States Air Force,)	
<i>Appellant.</i>	)	28 March 2025

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

COMES NOW Appellant, Airman Cody L. Kindred, by and through his undersigned counsel, and moves pursuant to Rules 6(c), 23(d), and 29(a) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1112(d)(2), *Manual for Courts-Martial, United States* (2024 ed.), for leave to file this motion to remand his case to the Chief Trial Judge of the Air Force Trial Judiciary for correction of the record.

Statement of Facts

Appellant was tried by a general court-martial at Luke Air Force Base, Arizona, on 25 April, 6 July, and 19, 20, 23, 24, 25, 26, 27, and 28 October 2023.¹ No audio recording of any court-martial session conducted on 25 April or 6 July 2023 is included in the record of trial. According to the trial transcript, Appellant was arraigned at the 25 April Article 39(a) session.² During two closed Article 39(a) sessions on 6 July 2023, the military judge received evidence concerning the defense’s Military Rule of Evidence 412 motions.³ [REDACTED]

¹ Trial Tr. at 1, 11, 105, 262, 375, 566, 802, 920, 1049, 1143.

² Trial Tr. at 9.

³ Trial Tr. at 14–54, 55–76.

[REDACTED]⁴ [REDACTED]

[REDACTED]

[REDACTED]⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷

[REDACTED]⁸ [REDACTED]

[REDACTED]

[REDACTED]⁹ [REDACTED]

[REDACTED]

[REDACTED]¹⁰

After the two closed Article 39(a) sessions, the military judge held an open Article 39(a) session on 6 July 2023 at which a defense motion seeking Appellant’s release from pretrial confinement was litigated.¹¹ The military judge ultimately denied that motion.¹²

Notwithstanding the missing audio, the court reporter signed a certification on 13 February 2024 stating: “I certify the Record of Trial as accurate and complete in accordance with R.C.M.

⁴ Trial Tr. at 17–37.

⁵ Charge Sheet.

⁶ Trial Tr. at 31.

⁷ App. Ex. XVII at page 4 of 5.

⁸ Trial Tr. at 57–69.

⁹ Charge Sheet.

¹⁰ App. Ex. XXVI at page 5 of 5.

¹¹ Trial Tr. at 77–105.

¹² App. Ex. XVI; Trial Tr. at 111.

1112(b) and (c)(1).”¹³ The record of trial the Government provided to this Court for docketing is not complete.

Law and Analysis

The record of trial of a general court-martial must include audio recordings of the proceedings. The record of trial in this case is missing audio recordings of portions of the court-martial proceedings that are both quantitatively and qualitatively substantial.

The Military Justice Act of 2016 amended Article 54(c) of the Uniform Code of Military Justice (UCMJ) to provide that a record of trial “shall contain such matters as the President may prescribe by regulation.”¹⁴ Carrying out that express delegation, President Trump required that “[t]he record of trial in every general and special court-martial shall include . . . [a] substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting.”¹⁵ President Trump further specified that “[a] record of trial is complete if it complies with the requirements of R.C.M. 1112(b),” which include the requirement for a substantially verbatim recording of the court-martial proceedings.¹⁶ Lest there be any doubt that the record must include audio of the court-martial proceedings rather than a mere written transcript, President Trump also directed that the record of a general or special court-martial “shall be

¹³ Certification of the Record of Trial in the case of *United States v. Airman Cody L. Kindred* (13 Feb. 2024), in Certified Record of Trial, Volume 4 of 9.

¹⁴ National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 5238, 130 Stat. 2000, 2918 (codified at 10 U.S.C. § 854(c)(1)). Division E of the National Defense Authorization Act for Fiscal Year 2017 is the Military Justice Act of 2016. *See* Pub. L. No. 114-328, § 5001, 130 Stat. at 2894. Article 54, UCMJ, has not been amended since enactment of the Military Justice Act of 2016.

¹⁵ Exec. Order No. 13825 of March 1, 2018, 83 Fed. Reg. 9889, 10046 (2018) (codified as amended at R.C.M. 1112(b)). Executive Order 14103 of July 28, 2023, made an amendment to R.C.M. 1112(b)(5) that is irrelevant to this motion. *See* 88 Fed. Reg. 50568, 50568 (2023). R.C.M. 1112(b) is otherwise unchanged since Executive Order 13825.

¹⁶ Exec. Order No. 13825, 83 Fed. Reg. at 10046 (codified at R.C.M. 1112(d)(2)). R.C.M. 1112(d)(2) is unchanged since Executive Order 13825.

independent of any other document and shall include a recording of the court-martial. Court-martial proceedings may be recorded by videotape, audiotape, or other technology from which sound images may be reproduced to accurately depict the court-martial.”¹⁷

In addition to requiring a sound recording of a court-martial that is “independent of any other document,” President Trump ordered that “[i]f a certified transcript is made under [R.C.M. 1114], it shall be attached to the record of trial.”¹⁸ Thus, a certified transcript is a required *attachment to* the record of trial but, unlike audio recordings, is not a *part of* the record of trial of a general or special court-martial.

A record of trial that does not include a substantially verbatim recording of the court-martial proceedings is incomplete.¹⁹ Appellate courts assess whether an omission is substantial on a case-by-case basis.²⁰ “Omissions are quantitatively substantial unless ‘the totality of omissions . . . becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness.’”²¹ Here, the missing audio recordings include multiple Article 39(a) sessions conducted over two days at which the military judge arraigned the accused and heard testimony that informed three of his rulings. That far exceeds “nothingness.”

The omissions are also qualitatively substantial. This case is directly analogous to *United States v. Kershaw*, where this Court held “that the record of trial is substantially incomplete in that the record of trial does not include verbatim audio recordings of proceedings conducted on

¹⁷ Exec. Order No. 13825, 83 Fed. Reg. at 10046 (codified at R.C.M. 1112(a)). R.C.M. 1112(a) is unchanged since Executive Order 13825.

¹⁸ Exec. Order No. 13825, 83 Fed. Reg. at 10050 (codified at R.C.M. 1114(d)). R.C.M. 1114(d) is unchanged since Executive Order 13825.

¹⁹ *United States v. Valentin-Andino*, 83 M.J. 537, 540–41 (A.F. Ct. Crim. App. 2023), *petition granted on other grounds*, __ M.J. __, No. 24-0208/AF, 2024 CAAF LEXIS 571 (C.A.A.F. Sept. 30, 2024).

²⁰ *United States v. Abrams*, 50 M.J. 361, 363 (C.A.A.F. 1999).

²¹ *United States v. Davenport*, 73 M.J. 373, 377 (C.A.A.F. 2014) (ellipsis in original) (quoting *United States v. Nelson*, 13 C.M.R. 38, 43 (C.M.A. 1953)).

25 April 2022, and verbatim audio recordings of the closed Mil. R. Evid. 412 hearings conducted on 13 December 2022.”²² Accordingly, the same remedy this Court ordered in *Kershaw* is also appropriate here: “return [of] the record to the Chief Trial Judge, Air Force Trial Judiciary, for correction under R.C.M. 1112(d), to address the missing substantially verbatim recordings of the court-martial proceedings.”²³

The presence of a certified transcript can never cure the absence of audio recordings of a substantial portion of a general court-martial’s proceedings. The Military Justice Act of 2016 expressly delegated to the President the authority to prescribe the contents of records of general, special, and summary courts-martial.²⁴ For general and special courts-martial, the President prescribed sound recordings as the record and a transcript as a mere attachment to the record.²⁵ He also provided that those sound recordings “shall be independent of any other document.”²⁶ Consistent with that presidential direction, this Court’s usual practice is to remand records for correction due to missing audio recordings notwithstanding the presence of a verbatim

²² *United States v. Kershaw*, No. ACM 40455, 2024 CCA LEXIS 354, at *5 (A.F. Ct. Crim. App. Aug. 26, 2024).

²³ *Id.*

²⁴ National Defense Authorization Act for 2017, Pub. L. No. 114-328, § 5238, 130 Stat. at 2918 (codified at 10 U.S.C. § 854(c)(1)).

²⁵ Exec. Order No. 13825, 83 Fed. Reg. at 10050 (codified at R.C.M. 1112(a), R.C.M. 1112(b)(1), R.C.M. 1114(d)).

²⁶ R.C.M. 1112(a).

transcript.²⁷ But regardless of the general rule, *here* the transcript is not a sufficient alternative to an audio recording. [REDACTED]

[REDACTED]

[REDACTED]

R.C.M. 1112(d)(2) provides that where a certified record of trial is incomplete, a “superior competent authority may return” it “to the military judge for correction.” That is the appropriate remedy for the incomplete record of trial in this case.

WHEREFORE, this Honorable Court should grant this motion.

Respectfully submitted,

[REDACTED]

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²⁷ *E.g.*, *United States v. McCoy*, No. ACM 40119, 2022 CCA LEXIS 632 (A.F. Ct. Crim. App. Oct. 31, 2022) (order) (rejecting Government argument that audio recordings are not necessary where a verbatim transcript exists); *United States v. Brown*, No. ACM 40066, 2022 CCA LEXIS 625 (A.F. Ct. Crim. App. Oct. 25, 2022) (order) (same). *Accord United States v. Goldman*, No. ACM 39939, 2022 CCA LEXIS 43, at *16 (A.F. Ct. Crim. App. Jan. 20, 2022). The suggestion to the contrary in *United States v. Reedy*, No. ACM 40358, 2024 CCA LEXIS 40, at *17–18 (A.F. Ct. Crim. App. Feb. 2, 2024), *petition denied*, 84 M.J. 417 (C.A.A.F. 2024), appears to be an outlier. *Reedy*’s reasoning is inconsistent not only with the weight of this Court’s own case law, but also with R.C.M. 1112(a)’s requirements that: (1) the court-martial proceedings be “recorded by” technological means “from which sound images may be reproduced to accurately depict the court-martial,” (2) the record “be independent of any other document,” and (3) the record “shall include a recording of the court-martial.”

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 28 March 2025.

Respectfully submitted,



Dwight H. Sullivan
Air Force Appellate Defense Division

UNITED STATES,)	UNITED STATES' RESPONSE
<i>Appellee,</i>)	TO MOTION FOR LEAVE TO
)	FILE MOTION FOR REMAND
v.)	
)	No. ACM 40499
)	
Airman (E-2))	Before Panel No. 3
CODY L. KINDRED,)	
United States Air Force,)	
<i>Appellant.</i>)	3 April 2025

Pursuant to Rules 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby responds to Appellant’s motion for leave to file a motion for remand. Appellant alleges the record of trial is incomplete in two respects: (1) the audio of Appellant’s 25 April 2023 arraignment is not included in the record of trial; and (2) the audio of two closed Article 39(a) sessions held on 6 July 2023, involving Appellant’s Military Rule of Evidence 412 motions are omitted from the record. The United States agrees that the items identified by Appellant are omitted from the record of trial and remand is appropriate in this case.

On 28 March 2025, Appellant filed a motion for leave to file a motion for remand. As justification for his request, Appellant cites two alleged errors with the Record of Trial (ROT). Specifically, Appellant claims : (1) the audio of Appellant’s 25 April 2023 arraignment is not included in the record of trial; and (2) the audio of two closed Article 39(a) sessions held on 6 July 2023, involving Appellant’s Military Rule of Evidence 412 motions are omitted from the record. (*Motion for Leave to file Motion for Remand*, dated 28 March 2024, at 1.) The government agrees that neither the audio of Appellant’s 25 April 2023 arraignment nor the audio

of the Article 39(a) sessions conducted on 6 July 2023 are included in the record of trial. The arraignment and the Article 39(a) sessions were transcribed and are included in full in the verbatim transcript of proceedings contained in the ROT. (R. at 2-10, 14-76.)

On 31 March 2025 undersigned counsel contacted the base legal office and notified them of the omissions identified by Appellant. Undersigned counsel also contacted Ms. LN, the assigned court reporter for Appellant's arraignment and notified her of the omission of the audio. That same day, Ms. L.N. provided undersigned counsel a memorandum for record she had provided the base legal office on 8 December 2023 explaining that her computer hard drive crashed in May 2023 and she lost all audio including the audio of Appellant's 25 April 2023 arraignment. This memorandum was not included in the record of trial.

On 2 April 2025, the base legal office confirmed they were in possession of the omitted audio of the Article 39(a) sessions held on 6 July 2023. They have been unable to locate audio of the 25 April 2023 arraignment. That audio was ordered sealed by the military judge.

Standard of Review

Whether a record of trial is complete is a question of law that courts review *de novo*. United States v. Henry, 53 M.J. 108, 110 (C.A.A.F. 2000). Whether an omission from a record of trial is "substantial" is a question of law reviewed de novo. United States v. Stoffer, 53 M.J. 26, 27 (C.A.A.F. 2000). Proper completion of post-trial processing is a question of law subject to de novo review. United States v. Sheffield, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 22 Jul. 2004).

Law and Argument

A complete record of proceedings, including all exhibits and a verbatim transcript, must be prepared for any general or special court-martial where a sentence of "death, dismissal,

discharge, confinement for more than six months, or forfeiture of pay for more than six months” is adjudged. Article 54(c)(2), UCMJ. Appellate courts understand that inevitably records will be imperfect, and therefore review for substantial omissions. United States v. Lashley, 14 M.J. 7, 8 (C.M.A. 1982). A record of trial must include, among other materials, “[a] substantially verbatim recording of the court-martial proceedings except sessions closed for deliberations and voting.” R.C.M. 1112(b)(1). A substantial omission renders a record incomplete and raises a presumption of prejudice that the government must rebut. United States v. Henry, 53 M.J. 108, 111 (citing United States v. McCullah, 11 M.J. 234, 237 (C.M.A. 1981)). Courts approach the question of what constitutes a substantial omission on a case-by-case basis. United States v. Abrams, 53 M.J. 361, 363 (C.A.A.F. 1999). In determining whether an omission is substantial, the courts assess whether the omission impacts “an appellant’s substantial rights at trial.” United States v. Hill, No. ACM 38648, 2015 CCA LEXIS 308, at *10 (A.F. Ct. Crim. App. July 29, 2015).

The government acknowledges that the omissions identified by Appellant are correct. Based on the memorandum provided by Ms. LN and the information provided by the base legal office, the government believes that the inclusion of Ms. LN’s memorandum from 8 December 2023 and the audio of the Article 39(a) sessions held 6 July 2023 would remedy the omissions from the record of trial. Because the audio of the Article 39(a) sessions was ordered sealed by the military judge, the government believes the most appropriate means of remedying these omissions would be for this Court to remand this case to the trial level to permit the inclusion of these additional materials and to permit the military judge to complete a certificate of correction. Moreover, a remand would allow government trial counsel and trial defense counsel the opportunity to verify the 6 July 2023 audio and allow them to correct any potential omissions.

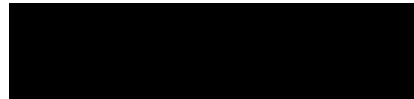
An incomplete record may be returned to the military judge for correction. R.C.M. 1112(d)(2). Appellant's requested relief is remand for correction of the omissions from the record of trial. Therefore, this Court should remand Appellant's case for new post-trial processing.

WHEREFORE, the government respectfully requests this Honorable Court grant Appellant's motion for leave to file a motion for remand.

Respectfully submitted,



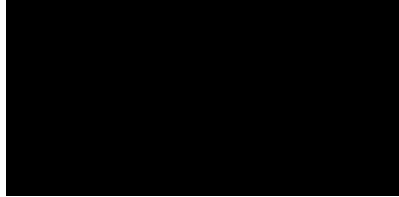
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 3 April 2025 via electronic filing.



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