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

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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5), **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 1 May 2024 |

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **13 July 2024**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 47 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,

[redacted]

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

**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 Air Force Government Trial and Appellate Operations Division on 1 May 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
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Air Force Appellate Defense Division
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1 May 2024

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

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|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ,<br>USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

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

[redacted]
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 1 May 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
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United States Air Force
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SECOND)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5), **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 1 July 2024 |

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **12 August 2024**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 108 days have elapsed. On the date requested, 150 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for 4 months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence, but waived all automatic forfeitures until release from confinement or expiration of service, whichever is sooner, for the benefit of Appellant's spouse. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Ann R. Marin Perez, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 1 July 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
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1 Jul 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

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

[redacted]
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 1 July 2024.

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

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

| | | |
|---|---|---|
| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (THIRD)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5), **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 29 July 2024 |

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

Pursuant to Rule 23.3(m)(3) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **11 September 2024**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 136 days have elapsed. On the date requested, 180 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for 4 months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence, but waived all automatic forfeitures until release from confinement or expiration of service, whichever is sooner, for the benefit of Appellant's spouse. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Ann R. Marin Perez, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, 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 Air Force Government Trial and Appellate Operations Division on 29 July 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
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29 Jul 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

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

[redacted]
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 29 July 2024.

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

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

| | | |
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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FOURTH)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 26 August 2024 |

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

Pursuant to Rule 23.3(m)(3) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **11 October 2024**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 164 days have elapsed. On the date requested, 210 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence, but waived all automatic forfeitures until release from confinement or expiration of service, whichever was sooner, for the benefit of Appellant's spouse. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Ann R. Marin Perez, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 34 cases; 23 cases are pending before this Court (15 cases are pending AOEs) and eleven cases are pending before the United States Court of Appeals for the Armed Forces (CAAF). To date, six cases have priority over the present case:

1. *United States v. Giles*, No. ACM 40482 – Undersigned counsel has completed her review of the record and is drafting the AOE. This AOE is expected to be submitted early September.

2. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel took over this case from an appellate defense counsel who changed assignments. The Grant Brief was filed 22 July 2024. The Government's Answer was filed on 21 August 2024. Undersigned counsel received an extension of time until 16 September 2024 to file the Reply Brief.

3. *United States v. Leipart*, No. 23-0163/AF – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court within 90 days, barring any extensions.

4. *United States v. Singleton*, No. ACM 40535 – The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

5. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

6. *United States v. Hunt*, No. ACM 40563 – The record of trial is three volumes consisting of six Prosecution Exhibits, two Defense Exhibits, and 18 Appellate Exhibits. The transcript is 423 pages. Thia appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

Additionally, undersigned counsel took on eight cases from departing military appellate defense counsel. Two of these cases are now pending petitions and supplements to the CAAF; their timing may impact Appellant's case. The remaining cases are awaiting a decision from this Court and the CAAF. Depending on timing and next steps, these other cases may be prioritized over Appellant's case.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
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Air Force Appellate Defense Division
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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 26 August 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
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28 August 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

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

[redacted]

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 28 August 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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**

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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIFTH)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 30 September 2024 |

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 November 2024**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence, but waived all automatic forfeitures until release from confinement or expiration of service, whichever was sooner, for the benefit of Appellant's spouse. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Ann R. Marin Perez, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 37 cases; 24 cases are pending before this Court (15 cases are pending AOEs), 11 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending petitions to the United States Supreme Court. To date, ten cases have priority over the present case:

1. *United States v. Johnson*, No. 24-0004/SF – On 24 September 2024, the CAAF specified two issues in this case for briefing. Undersigned counsel inherited this case from an appellate defense counsel who changed duty assignments. This appellant's brief, which counsel is currently drafting, is due on 24 October 2024.

2. *United States v. Giles*, No. ACM 40482 – This AOE was submitted on 5 September 2024. Upon receipt of the Government's Answer Brief, undersigned counsel will assess whether a Reply Brief is warranted and then draft any such Reply.

3. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel will file a petition of certiorari to the United States Supreme Court by 29 December 2024.

4. *United States v. Wells*, No. 23-0219/AF - The CAAF issued a decision in this case on 24 September 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court by 23 December 2024, barring any extensions.

5. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel filed the Reply Brief on 16 September 2024. Oral argument has yet to be scheduled.

6. *United States v. Singleton*, No. ACM 40535 (EOT 9 pending) – The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

7. *United States v. Hunt*, No. ACM 40563 (EOT 6) – The record of trial is three volumes consisting of six Prosecution Exhibits, two Defense Exhibits, and 18 Appellate Exhibits. The transcript is 423 pages. Thia appellant is not currently confined. Civilian appellate defense counsel is awaiting undersigned counsel's review of this appellant's record.

8. *United States v. Kim*, No. ACM 24007 – This direct appeal case has been docketed since 2 February 2024 and is at EOT 5. The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

9. *United States v. Gray*, No. ACM 40648 – This direct appeal case has been docketed since 4 October 2023, although it is only at EOT 1. The record of trial is four volumes consisting of seven Prosecution Exhibits, nine Defense Exhibits, and 20 Appellate Exhibits. The transcript is 399 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

10. *United States v. Thomas*, No. ACM 22083 – This direct appeal case has been docketed since 14 February 2024, although it is only at EOT 1. The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of the record of trial.

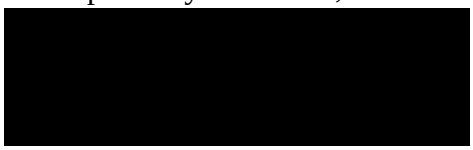
Additionally, undersigned counsel took on ten cases from departing military appellate defense counsel. Two of these cases are pending petitions and supplements to the CAAF; their timing may impact Appellant's case. The remaining cases are awaiting a decision from this Court and the CAAF. Depending on timing and next steps, these other cases may be prioritized over Appellant's case.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,



SAMANTHA M. CASTANIEN, Capt, 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 Air Force Government Trial and Appellate Operations Division on 30 September 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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1 October 2024

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

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

[redacted]

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 1 October 2024.

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

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

| | | |
|---|---|---|
| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SIXTH)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 28 October 2024 |

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 December 2024**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 227 days have elapsed. On the date requested, 270 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence, but waived all automatic forfeitures until release from confinement or expiration of service, whichever was sooner, for the benefit of Appellant's spouse. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Ann R. Marin Perez, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 38 cases; 22 cases are pending before this Court (17 cases are pending AOEs); 14 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF); and two cases are pending petitions to the United States Supreme Court. Ten cases have priority over the present case:

1. *United States v. Johnson*, No. 24-0004/SF – On 24 September 2024, the CAAF specified two issues in this case for briefing. Undersigned counsel inherited this case from an appellate defense counsel who changed duty assignments. This appellant's brief, which counsel is currently drafting, is due on 4 November 2024.

2. *United States v. Wood*, USCA Dkt. No. 25-0005/AF – Undersigned counsel is finalizing a four-issue supplement to the petition for grant of review to the CAAF, due 29 October 2024.

3. *United States v. Casillas*, No. 24-0089/AF – Undersigned counsel filed the Reply Brief on 16 September 2024. Oral argument is expected to occur in December, although it has yet to be formally scheduled.

4. *United States v. Folts*, No. ACM 40322 – On 26 August 2024, this Court issued an opinion in this appellant's case. As this Court denied the motion for reconsideration, undersigned counsel is now working with civilian appellate defense counsel on drafting the petition and supplement to the CAAF, due in early December.

5. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Undersigned counsel will file a petition of certiorari to the United States Supreme Court by 29 December 2024.

6. *United States v. Wells*, No. 23-0219/AF - The CAAF issued a decision in this case on 24 September 2024. Undersigned counsel anticipates filing a petition of certiorari to the United States Supreme Court by 23 December 2024, barring any extensions.

7. *United States v. Singleton*, No. ACM 40535 – The trial transcript is 1,738 pages long and the record of trial is comprised of twelve volumes containing six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

8. *United States v. Gray*, No. ACM 40648 – The record of trial for this direct appeal is four volumes consisting of seven Prosecution Exhibits, nine Defense Exhibits, and 20 Appellate Exhibits. The transcript is 399 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

9. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

10. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Email: samantha.castanien.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 Air Force Government Trial and Appellate Operations Division on 28 October 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
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28 October 2024

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

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| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

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

[redacted]

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 28 October 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (SEVENTH)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 2 December 2024 |

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 January 2025**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence, but waived all automatic forfeitures until release from confinement or expiration of service, whichever was sooner, for the benefit of Appellant's spouse. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Ann R. Marin Perez, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 37 cases; 21 cases are pending before this Court (16 cases are pending AOEs), 14 cases are pending before the CAAF, and two cases are pending petitions to the United States Supreme Court. Seven cases have priority over the present case:

1. *United States v. Casillas*, No. 24-0089/AF – Since Appellant's last enlargement of time, the CAAF ordered additional briefing for three issues in this case on 29 October 2024. Briefs are due 9 December 2024. Oral argument is scheduled for 14 January 2025.

2. *United States v. Leipart*, No. 24A288 – The CAAF issued a decision in this case on 1 August 2024. Since Appellant's last enlargement of time, undersigned counsel drafted the petition of certiorari to the United States Supreme Court. The filing is undergoing final review and editing before being sent to the printer. It will be filed by 29 December 2024.

3. *United States v. Folts*, No. ACM 40322 – On 26 August 2024, this Court issued an opinion in this appellant's case. Since Appellant's last enlargement of time, undersigned counsel drafted two issues for the supplement to the petition for grant of review and is working with civilian appellate defense counsel to finalize the filing, due to the CAAF mid-December.

4. *United States v. Johnson*, No. 24-0004/SF – Since Appellant's last request for an enlargement of time, undersigned filed this two-issue Grant Brief on 4 November 2024. Any reply brief will be due after the Government's Answer, which is due 20 December.

5. *United States v. Wells*, No. 23-0219/AF – The CAAF issued a decision in this case on 24 September 2024. Since Appellant's last request for an enlargement of time, undersigned

counsel filed for an extension to file the petition of certiorari to the United States Supreme Court, which is currently due 23 December 2024.

6. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

7. *United States v. Thomas*, No. ACM 22083 – The record of trial for this direct appeal is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

Additionally, undersigned counsel is still detailed to *United States v. Singleton*, No. ACM 40535. Undersigned counsel is not lead counsel on this case but is still detailed because she has not yet been able to withdraw as counsel. Undersigned counsel has not completed a review of this twelve-volume case, with its 1,738 page transcript, six Prosecution Exhibits, 17 Defense Exhibits, one Court Exhibit, and 89 Appellate Exhibits. But the other detailed counsel has begun review. Until a motion to withdraw is filed and granted or the assignments of error brief is filed, this case will be prioritized over Appellant's.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
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Air Force Appellate Defense Division
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Office: (240) 612-4770
Email: samantha.castanien.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 Air Force Government Trial and Appellate Operations Division on 2 December 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
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3 December 2024

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

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|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES'<br>OPPOSITION TO APPELLANT'S<br>MOTION FOR ENLARGEMENT<br>OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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 yearly 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 tow 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 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.

[redacted]
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 3 December 2024.

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

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

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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (EIGHTH)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, | ) | No. ACM S32771 |
| *Appellant.* | ) | 23 December 2024 |

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 February 2025**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 283 days have elapsed.[1] On the date requested, 330 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence, but waived all automatic forfeitures until release from confinement or expiration of service, whichever was sooner, for the benefit of Appellant's spouse. Record of Trial (ROT), Vol. 1, *Convening Authority Decision on Action* – United States v. SSgt Ann R. Marin Perez, dated 11 January 2024.

[1] This request for an enlargement of time is being filed well in advance to avoid any issues while the Court is closed from 24-26 December 2024 and 1-2 January 2025.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information. Appellate defense counsel is currently assigned 38 cases; 20 cases are pending before this Court (16 cases are pending AOEs), 16 cases are pending before the Court of Appeals for the Armed Forces (CAAF), and two cases are pending petitions to the United States Supreme Court. Seven cases have priority over the present case:

1. *United States v. Leipart*, No. 24A288 – Since Appellant's last enlargement of time, undersigned counsel completed the petition for a writ of certiorari and secured printing. The petition will be filed by 29 December 2024.

2. *United States v. Folts*, No. 25-0043/AF – Since Appellant's last enlargement of time, undersigned counsel finalized the supplement to the petition for grant of review with civilian counsel. The three-issue supplement will be filed by 26 December 2024.

3. *United States v. Johnson*, No. 24-0004/SF – The Government filed its Answer in this case on 20 December 2024. Undersigned counsel is currently working the Reply Brief, which is due 30 December 2024. Oral argument is anticipated to occur at the end of January 2025.

4. *United States v. Casillas*, No. 24-0089/AF – Since Appellant's last enlargement of time, undersigned counsel filed the supplemental briefing ordered for three issues. Undersigned counsel is now preparing for oral argument, scheduled for 14 January 2025.

5. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one court exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

6. *United States v. Wells*, No. 24A520 – The CAAF issued a decision in this case on 24 September 2024. The petition for a writ of certiorari to the United States Supreme Court is due 21 February 2025.

7. *United States v. Thomas*, No. ACM 22083 – The record of trial for this direct appeal is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: samantha.castanien.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 Air Force Government Trial and Appellate Operations Division on 23 December 2024.

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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23 December 2024

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

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|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES'<br>OPPOSITION TO APPELLANT'S<br>MOTION FOR ENLARGEMENT<br>OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly yearly long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
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 23 December 2024.

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

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

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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (NINTH)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 27 January 2025 |

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 March 2025**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 318 days have elapsed. On the date requested, 360 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence but waived all automatic forfeitures until release from confinement or expiration of service, whichever was sooner, for the benefit of Appellant's spouse. Convening Authority Decision on Action – *United States v. SSgt Ann R. Marin Perez*, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four

Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Appellate defense counsel is currently assigned 38 cases; 19 cases are pending before this Court (16 cases are pending AOEs), 17 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending before the United States Supreme Court (one is pending a petition).

Since Appellant's last request for an extension of time, undersigned counsel filed the petition for certiorari for *United States v. Leipart* with the United States Supreme Court, filed with the CAAF the three-issue supplement to the petition for grant of review in *United States v. Folts*, No. 25-0043/AF, along with a reply, filed two additional petitions and supplements to the CAAF (*United States v. Scott* and *United States v. Lawson*), and completed the reply brief, along with two motions and their associated replies, in *United States v. Johnson*, No. 24-0004/SF, also for the CAAF. Undersigned counsel also completed oral argument in *United States v. Casillas*, No. 24-0089/AF. To date, four cases have priority over the present case:

1. *United States v. Johnson*, No. 24-0004/SF – Undersigned counsel is preparing for oral argument, scheduled for 29 January 2025.

2. *United States v. Wells*, No. 24A520 – The CAAF issued a decision in this case on 24 September 2024. From the date of decision, this appellant has 90 days to file a petition of certiorari to the United States Supreme Court. 28 U.S.C. § 1259(3); Supreme Court Rule 13(1). Due to undersigned counsel's schedule, undersigned counsel requested a 60-day extension to file the petition for *Wells*. Supreme Court Rule 13(5). Thus, undersigned counsel will file a petition of certiorari to the United States Supreme Court by 21 February 2025. Undersigned counsel intends to work *Wells* simultaneously with *United States v. Kim*, No. ACM 24007. Undersigned counsel will begin briefing *Wells* following *Johnson*, and then turn to *Kim*.

3. *United States v. Kim*, No. ACM 24007 – The record of trial for this direct appeal is five volumes consisting of five Prosecution Exhibits, three Defense Exhibits, 27 Appellate Exhibits, and one Court Exhibit. The transcript is 421 pages. This appellant is not currently confined. Counsel has not yet completed her review of this appellant's record.

4. *United States v. Thomas*, No. ACM 22083 – The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Counsel has not yet completed her review of the record of trial.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Email: samantha.castanien.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 Air Force Government Trial and Appellate Operations Division on 27 January 2025.

SAMANTHA M. CASTANIEN, Capt, USAF
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29 January 2025

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

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|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES'<br>OPPOSITION TO APPELLANT'S<br>MOTION FOR ENLARGEMENT<br>OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's nearly yearly long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not 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.

[redacted]
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 29 January 2025.

[redacted]
JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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**

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| **UNITED STATES,** *Appellee,* | ) | **APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (TENTH)** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 24 February 2025 |

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time (EOT) to file Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 April 2025**. The record of trial was docketed with this Court on 15 March 2024. From the date of docketing to the present date, 346 days have elapsed. On the date requested, 390 days will have elapsed.

On 18 December 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge, consistent with Appellant's pleas, found her guilty of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced Appellant to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad conduct discharge. R. at 108. The convening authority took no action on the findings or sentence but waived all automatic forfeitures until release from confinement or expiration of service, whichever was sooner, for the benefit of Appellant's spouse. Convening Authority Decision on Action – *United States v. SSgt Ann R. Marin Perez*, dated 11 January 2024.

The trial transcript is 108 pages long and the record of trial is an electronic ROT, which is one volume of 381 pages. There are four Prosecution Exhibits, fourteen Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is not currently confined.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel provides the following information. Appellate defense counsel is currently assigned 40 cases; 21 cases are pending before this Court (19 cases are pending AOEs), 17 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and two cases are pending before the United States Supreme Court.

Since Appellant's last request for an extension of time, undersigned counsel completed oral argument in *United States v. Johnson*, No. 24-0004/SF (29 Jan. 2025) and wrote and filed the petition of certiorari for *United States v. Wells*, No. 24A520 (pending petition docketing number). She also completed review of the record in *United States v. Kim*, No. ACM 24007, as detailed more below. To date, four cases have priority over the present case:

1. *United States v. Kim*, No. ACM 24007 – Undersigned counsel completed review of this appellant's record and is researching and drafting the AOE. While working this appellant's case, undersigned counsel will be participating in over ten moots; four remain for the following cases: *United States v. Navarro Aguirre*, No. 24-0146/AF; *United States v. Roan*, No. 24-0104; and *United States v. Jenkins*, No. ACM S32765. She will also be attending oral argument at the CAAF for *United States v. Csiti*, No. 24-0175/AF, *United States v. Arroyo*, No. 24-0212, *Navarro Aguirre* and *Roan*, which will absorb the majority of 25 and 26 February 2025.

2. *United States v. Braum*, No. 25-0046/AF – Since Appellant's last request for an EOT, the CAAF granted review of one issue in this case. The Grant Brief is due Tuesday, 25 February 2025, and while undersigned counsel is not lead on this case, she has been assisting with the joint appendix (JA) and intends to peer review the brief. As part of assembling the JA, undersigned

counsel had to travel to the CAAF on 20 February 2025 to review the original record of trial and obtain a new copy of an appellate exhibit for reproduction in the JA. This, in conjunction with filing *Wells* in-person at the Supreme Court, absorbed most of a duty day, preventing work on *Kim*.

3. *United States v. Giles*, No. ACM 40482 – The petition for grant of review was filed on 18 February 2025, along with a request for a 21-day extension to file the supplement to the petition. C.A.A.F. R. 19(a)(5)(A). Undersigned counsel intends to work the supplement to the petition simultaneously with *United States v. Thomas*, No. ACM 22083.

4. *United States v. Thomas*, No. ACM 22083 - The record of trial is four volumes consisting of 14 Prosecution Exhibits, five Defense Exhibits, and 33 Appellate Exhibits. The verbatim transcript is 528 pages. This appellant is not currently confined. Undersigned counsel has not yet completed her review of this appellant's record.

Appellant was advised of her right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on her case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein she consented to the request for this enlargement of time.

Through no fault of Appellant, undersigned counsel has been unable complete her review of Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise her regarding potential errors.

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

Respectfully submitted,

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 24 February 2025.

SAMANTHA M. CASTANIEN, Capt, USAF
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24 February 2025

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

| | | |
|---|---|---|
| UNITED STATES,<br>*Appellee,*<br><br>v.<br><br>Staff Sergeant (E-5)<br>ANN R. MARIN PEREZ, USAF,<br>*Appellant.* | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | UNITED STATES'<br>OPPOSITION TO APPELLANT'S<br>MOTION FOR ENLARGEMENT<br>OF TIME<br><br>ACM S32771<br><br>Panel No. 1 |

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over a year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed more than two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not 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.

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Counsel Division
Air Force Legal Operations Agency
United States Air Force
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**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 Febraury 2025.

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

| | | |
|---|---|---|
| **UNITED STATES,** *Appellee,* | ) | **BRIEF ON BEHALF OF APPELLANT** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant*. | ) | No. ACM S32771 |
| | ) | 9 April 2025 |

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

## ASSIGNMENTS OF ERROR

**I.**

**APPELLANT'S GUILTY PLEA FOR LARCENY IS IMPROVIDENT BECAUSE A SUBSTANTIAL CONFLICT WAS LEFT UNRESOLVED ON THE ESSENTIAL ELEMENT OF THE PROPERTY'S LEGITIMATE MARKET VALUE.**

**II.**

**APPELLANT IS ENTITLED TO RELIEF BECAUSE THE MILITARY JUDGE MISAPPREHENDED THE VALUE OF THE LARCENY FOR WHICH HE SENTENCED APPELLANT**.

## STATEMENT OF THE CASE

On December 18, 2023, at a special court-martial convened at Dover Air Force Base, Delaware, a military judge found Staff Sergeant Ann R. Marin Perez (Appellant) guilty, consistent with her pleas, of one charge and one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ). R. at 1, 7, 11, 48. The military judge sentenced SSgt Marin Perez to be reduced to the grade of E-1, to be confined for four months, and to be discharged from the service with a bad-conduct discharge. R. at 108. The convening authority took no action on the findings or sentence but waived all automatic forfeitures until release from confinement or

expiration of service, whichever was sooner, for the benefit of SSgt Marin Perez's spouse and children. Convening Authority Decision on Action (Jan. 11, 2024).

## STATEMENT OF FACTS

On December 18, 2022, SSgt Marin Perez's husband, her mother, and the youngest of her three daughters were involved in a major car accident. Def. Ex. K at 3. Her husband had been driving and his car was totaled. *Id.*; R. at 23. Her husband could not work following the accident because his car was destroyed, but SSgt Marin Perez still had a car loan payment each month. R. at 23. With three children and a parent in the home, Def. Ex. K at 2-3, SSgt Marin Perez "needed extra money to help pay for [her] husband's vehicle." R. at 23. To help pay the bills, SSgt Marin Perez stole several pieces of jewelry from a home where she periodically provided cleaning services. R. at 22, 27-28. She took two necklaces, three bracelets, and a pair of earrings. R. at 23. She pawned these items, along with some of her own jewelry, Pros. Ex. 1, Atch. 4, at 8:08, and received $1,650. R. at 23; Pros. Ex. 1 at 13-14, 17.

The owner of the jewelry discovered several pieces of her jewelry were missing and called the local police. Pros. Ex. 1 at 2. Local law enforcement determined SSgt Marin Perez had visited a few local pawn shops. *Id*. The owner of the property, accompanied by police, went to those shops, and the owner recovered six missing pieces of jewelry: two necklaces, three bracelets, and a pair of earrings. Pros. Ex. 1 at 2, 21-26; R. at 60-61.

The recovered jewelry was appraised by Mr. DL, the owner of a jewelry repair store. Pros. Ex. 1 at 2, 21-26; Def. Ex. N at 1. The total appraised value of the six items was $21,300. *Id*. However, the appraised value "combine[d] several insurance factors and double[d] the proposed value" for each piece of jewelry "to reflect inflation and other factors." Def. Ex. N at 1. The six pieces of jewelry were not worth that much and would not be sold on the market for that price. *Id*.

During her providence inquiry, SSgt Marin Perez admitted the value of the jewelry was $21,300, consistent with the Government's charging language of "about $21,300." *Compare* R. at 20-22, *and* R. at 30, *with* Charge Sheet. The military judge advised SSgt Marin Perez that the value of the property was an element that she had to admit to and noted that value was "about $21,300." R. at 21. The Stipulation of Fact also made clear the value of the property, as an element of the offense, was "of a value of $21,300." Pros. Ex. 1 at 3. SSgt Marin Perez agreed that this value was true and accurate. *Id*.; R. at 17. The military judge did not define the term "value" during the providence inquiry or at any other time. After admitting to all the elements of the offense, the military judge found that SSgt Marin Perez's "plea of guilty [was] made voluntarily with full knowledge of its meaning and effect," and that she "knowingly, intelligently, and consciously waived [her] rights against self-incrimination, to a trial of facts by a court-martial, and to be confronted by the witnesses against her." R. at 47. Accordingly, the military judge found her plea to be provident and found her guilty of the charged larceny offense. R. at 47-48.

During sentencing, the defense admitted a letter from Mr. DL, the jewelry store owner who did the appraisal, which prompted the military judge to re-open the *Care*[1] inquiry. Def. Ex. N; R. at 86. While noting Mr. DL stood by his appraisal, the military judge pointed out that Mr. DL "explains what goes into appraisal and doesn't say specifically what the current market value would be. Says that there is some inflation that goes into evaluation and that — it's a little — it's a little wish-washy." R. at 86. The military judge paraphrased the last line of the exhibit that "there's an argument to be made the property may be worth less." R. at 86; *see* Def. Ex. N at 1 ("I can confidently tell all parties that there is an argument to be made that the jewelry is not worth that much and the value of the jewelry is less."). The military judge noted there was "a little bit of

[1] *United States v. Care*, 18 C.M.A. 535 (C.M.A. 1969).

confusion" on the "about $21,300" value the Government charged when the value does not have to be exactly $21,300, but the exact dollar amount value of the jewelry was unclear. R. at 86-87. The military judge asked whether SSgt Marin Perez agreed that the value of the jewelry was over $1,000. R. at 87. She did. *Id*. The military judge concluded, "And so that satisfies that the charge [']about[’], again, the court has information that says we don't know that's exactly what it was but the government charged you [']about[’] amount as opposed to the exact amount. And I don't have enough — the letter doesn't provide any amount as to what may be otherwise be legitimate argument . . . ." *Id*. But, in fact, the letter did provide an amount:

> The appraised value of each of the pieces of jewelry does not reflect the exact cost of how much each of the pieces of jewelry would be listed and sold for on the market Today [sic]. Instead, the appraised value combines several insurance factors and *doubles* the proposed value of the jewelry to reflect inflation and other factors. As such, the appraised values listed for each of the items has been inflated and the actual value of each of the pieces is less.

Def. Ex. N at 1 (emphasis added). The military judge did not analyze or reference this part of the letter from Mr. DL. Instead, the military judge concluded the plea was provident because SSgt Marin Perez pled to a value of over $1,000 and "there is evidence that the property has value of $21,300 or . . . with the [']about[’] amount . . . the plea is still provident." R. at 87-88.

After confirming SSgt Marin Perez wanted to stay with her plea, R. at 88, the military judge listened to sentencing arguments. The Government, while maintaining the jewelry was worth around $21,300, caveated its argument by saying the value was "at least over $1,000." R. at 94. Thereafter, the defense highlighted the appraised value "doubles the proposed value of the jewelry." R. at 96. The military judge did not re-open the *Care* again.

On the one-year anniversary of her husband's car accident, the military judge sentenced SSgt Marin Perez to a bad-conduct discharge, four months of confinement, and reduction to E-1 for stealing jewelry worth a total of "about $21,300." Entry of Judgment at 1.

## ARGUMENT

### I.

**SSgt Marin Perez's guilty plea for larceny was improvident because a substantial conflict was left unresolved on the essential element of the property's legitimate market value.**

### Standard of Review

"A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion." *United States v. Forbes*, 78 M.J. 279, 281 (C.A.A.F. 2019) (quoting *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996)). There must be a "substantial conflict between the plea and the accused's statements or other evidence" for this Court to set aside a guilty plea. *United States v. Hines*, 73 M.J. 119, 124 (C.A.A.F. 2014) (quoting *United States v. Watson*, 71 M.J. 54, 58 (C.A.A.F. 2012)). An abuse of discretion occurs under these circumstances when a military judge accepts the guilty plea without making further inquiries regarding the conflict. *Watson*, 71 M.J. at 58. Questions of law arising from the guilty plea, i.e., issues other than the adequacy of the factual inquiry, are reviewed de novo. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008) (citing *United States v. Harris*, 61 M.J. 391, 398 (C.A.A.F. 2005)).

### Law and Analysis

"If an accused . . . after a plea of guilty sets up a matter inconsistent with the plea . . . a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty." Article 45(a), 10 U.S.C. § 845(a) (2022). Consistent with Article 45, UCMJ, when the accused "'sets up a matter inconsistent with the plea' at any time during the proceeding, the military judge must either resolve the apparent inconsistency or reject the plea." *United States v. Garcia*, 44 M.J. 496, 498 (C.A.A.F. 1996) (quoting Article 45(a), UCMJ). Here, SSgt Marin Perez's guilty plea concerning the value of the stolen property at issue was inconsistent with other

evidence in the record. Because an "essential element" remained unresolved by the military judge, the findings and sentence should be set aside.

1. The Government was required to charge, and prove, a "certain value" for the larceny.

Article 121, UCMJ, criminalizes "larceny," defined as the wrongful taking from the possession of the owner any personal property, by any means, with intent permanently to deprive another person of the use or benefit of the property. 10 U.S.C. § 921. The text of the statute itself does not require pleading a particular value of the stolen property. *Id*. However, the elements prescribed by the President require that property be of a "certain value." *Manual for Courts-Martial, United States* (2019 ed.) [hereinafter *MCM*], pt. IV, ¶ 64.b.(1)(c); *see United States v. Brown*, 84 M.J. 124, 127 (C.A.A.F. 2024) (quoting *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017)) (giving deference to the President's narrowing construction of a statute when such narrowing does not contradict the express statutory language). And the model specification includes a blank space for a specific value to be inputted. *MCM*, pt. IV, ¶ 64.e.(1).

Specific value being an element is consistent with precedent: "Value is an essential element of pleading and proof in the offense of larceny. It is a matter which must be determined by the court-martial." *United States v. Thompson*, 27 C.M.R. 119, 121 (C.M.A. 1958) (internal citation omitted). The Manual reiterates this: "Value is a question of fact to be determined on the basis of all the evidence admitted." *MCM*, pt. IV, ¶ 64.c.(1)(g)(i). When the Government "narrow[s] the scope of the charged offense" by alleging an elemental fact with more particularity than is required by statute, the conviction may only be sustained on the facts alleged. *United States v. English*, 79 M.J. 116, 120 (C.A.A.F. 2019). Thus, as an element that must be found and factually determined, if pled in the specification, the Government must prove the specified value of the stolen property charged.

2. The Government charged the incorrect specific value, an appraisal value, rather than the legitimate market value.

The proper measure of value is the "legitimate market value at the time and place of the theft." *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii). Market value can be established by "proof of the recent purchase price paid for the article in the legitimate market involved or by testimony or other admissible evidence from any person who is familiar through training or experience with the market value in question." *Id*. Where the value cannot be readily determined, replacement value may be used, but only if it is less than the legitimate market value. *Id*.

Here, the Government charged SSgt Marin Perez with stealing jewelry worth a certain value of "about $21,300." Charge Sheet. But this allegation, along with the providence inquiry that followed at trial, was not based on the legitimate market value; the "about $21,300" value is based on an insurance appraisal. *See* Pros. Ex. 1 at 21-26 (revealing the replacement value listed is part of insurance documentation); Def. Ex. N at 1 (explaining the insurance report does not reflect today's sell price). Legally, the insurance appraisal price is not the legitimate market value of the property, as explained by Mr. DL, a "person who is familiar through training or experience with the market value in question." *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii); Def. Ex. N at 1.

Mr. DL owns a company that specializes in jewelry repairs. Def. Ex. N at 1. He provided the original appraisal value of $21,300. *See* Pros. Ex. 1 at 21-26 (adding up the insurance-based replacement cost values to get $21,300). He is the only individual who provided a value of the property in this case and qualifies as a person competent to do so. *See MCM*, pt. IV, ¶ 64.c.(1)(g)(iii) (supporting how Mr. DL would qualify as someone with "training or experience" to explain the value of the property). However, he acknowledged that "[t]he appraised value of each of the pieces of jewelry *does not reflect the exact cost of how much each of the pieces of jewelry would be listed and sold for on the market [t]oday*." Def. Ex. N at 1. This acknowledgment

directly contradicts the value of the property listed in the specification, and, more importantly, SSgt Marin Perez's guilty plea, where she admits that "about $21,300" is the value of the property. The legitimate market value of the jewelry is *at most half* of the appraised value: "[T]he appraised value combines several insurance factors and *doubles* the proposed value of the jewelry to reflect inflation and other factors. As such the appraised values listed for each of the items has been *inflated and the actual value of each of the pieces is less*." Def. Ex. N at 1. (emphasis added).

Mr. DL's explanation is consistent with insurance practice and the difference between market value versus insurable values. A jewelry appraisal "helps determine the []retail replacement value or cost of replacing [a] piece in the event of a loss." Tara Dosh, *Getting a Jewelry Appraisal for Insurance: What You Need to Know*, JEWELERS MUTUAL (March, 10, 2023, 12:00 PM), https://www.jewelersmutual.com/the-jewelry-box/getting-jewelry-appraisal-insurance-what-you-need-to-know. The "retail replacement value is not the same as the resale value. It's a much higher estimate as it details how much it would cost for [someone] to buy a replacement, not to sell the piece, which would have a lower market value." *Id*. The legitimate market value, then, is not what the jewelry would be appraised for because that value is inflated for insurance companies to cover replacement cost. *Id*.; Def. Ex. N at 1. Notably, the Manual accommodates for this difference in value by providing that the legitimate market value will trump replacement cost if the legitimate market value is less, thereby still establishing the value of the property at the legitimate market value. *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii).

3. <u>The Government's erroneous charging choice on the property's value created a substantial conflict that the military judge did not resolve.</u>

The legitimate market value is not what the Government charged nor is it what SSgt Marin Perez pled to. Rather, the Government charged the appraisal value, which is a grossly inflated value inconsistent with the legal definition of value under the Manual. SSgt Marin Perez originally

pled to this inflated value, but then Mr. DL's letter (Def. Ex. N) called that value into question. This is a substantial conflict on an "essential element," which the military judge recognized by reopening the *Care* inquiry. R. at 86. However, the military judge did not resolve the conflict as required by Article 45, UCMJ.

After Defense Exhibit N was admitted into evidence, the military judge correctly realized there was a problem between the value of the property pled to and the legal value of the property. R. at 86-87. But instead of focusing on the fact the legitimate market value of the jewelry had been *doubled* and *inflated*, the military judge focused on the fact the property was at least over $1,000 to satisfy the statutory "breakdown in the military." R. at 87. But this was not even a conflict to be reconciled; the property being over $1,000 was never called into question. Rather, the military judge needed to resolve the legitimate market value following the admission of Defense Exhibit N, which called the specific value element into question and whether SSgt Marin Perez knowingly pled guilty to the correct value. Instead, the military judge incorrectly found that "the letter doesn't provide any amount as to what may be otherwise a legitimate argument" on the value. R. at 87. The letter does provide that: the legitimate market value of the property appears to be *at most half* of the value charged, about $10,650, which is nowhere near "about $21,300." Def. Ex. N at 1.

This is both a legal and factual error. First, the letter provides that the legitimate market value, the value that the Government was required to prove and charge, was at least doubled during an insurance appraisal. Def. Ex. N at 1. This is not the market value under the law because it is not what the jewelry would have sold for at the time. *Compare MCM*, pt. IV, ¶ 64.c.(1)(g)(iii) ("Market value may be established by proof of the recent purchase price . . . or other admissible evidence from any person who is familiar through training or experience with the market value . . . ."), *with* Def. Ex. N at 1 (admitting the appraisal value is not the "cost of how much each of the pieces of

jewelry would be listed and sold for on the market [t]oday"). Second, factually, the market value was presumably somewhere closer to about $10,650 (half the appraised value), which is not what the Government charged nor what SSgt Marin Perez admitted to. Rather, she admitted to a doubled and inflated value rather than the legal value of the property as defined by the Manual, a value that was inconsistent with evidence presented during sentencing.

The military judge overlooked the evidence of the legitimate market value present in the letter and did not make the appropriate further inquiries to correct this conflict. The plea should have been rejected once the value of "about $21,300" was contradicted by the letter and when that contradiction was both abandoned and left unresolved upon further questioning by the military judge. *See* 10 U.S.C. § 845(a) (requiring that when an accused sets up a matter inconsistent with the plea, a plea of not guilty shall be entered in the record). At this point, even though SSgt Marin Perez pled to *a* larceny by stealing jewelry of *some* value, she did not plead to *the* larceny the Government charged, which had an essential element of admitting she stole property with a value of $21,300.

This defect is no different than what happened in *United States v. Lubasky*, 68 M.J. 260 (C.A.A.F. 2010), and the result should be the same here. Legally, the wrong crime victim was charged in *Lubasky*. 68 M.J. at 263. The individual charged did not have a "superior possessory interest" over the property at issue, thus that property could not be legally stolen from that particular individual. *Id*. (citing *MCM*, Analysis of Punitive Articles app. 23 at A23-16 (2008 ed.)). Therefore, those incorrectly charged larcenies were set aside. *Id*. at 265.

Similarly, here, the Government charged an essential element that was legally wrong: the jewelry's value. The value was required to be the legitimate market value and that specific value had to be proven. SSgt Marin Perez was not informed of any—let alone the correct—legal meaning

of the word "value" and Defense Exhibit N impeached the value the Government charged. In this guilty plea context, by recognizing then failing to resolve the conflict on the value element, the military judge abused his discretion by accepting SSgt Marin Perez's plea of guilty. Therefore, where SSgt Marin Perez stole jewelry valued at substantially *less than* the value charged and which was inconsistent with the value she admitted, her plea was improvident.

**WHEREFORE**, SSgt Marin Perez requests that this Court set aside the finding of guilty as to the Charge and Specification and set aside the sentence.

## II.

**SSgt Marin Perez is entitled to relief because the military judge misapprehended the value of the larceny for which he sentenced her.**

### Standard of Review

Questions of law arising from a guilty plea are reviewed de novo. *Inabinette*, 66 M.J. at 322. Issues not raised at trial are reviewed for plain error as long as they are not waived. *United States v. Day*, 83 M.J. 53, 57 (C.A.A.F. 2022). "To prevail [on plain error review], [the appellant] bears the burden of establishing (1) error, (2) that is clear or obvious, and (3) results in material prejudice to a substantial right of the accused." *United States v. Cole*, 84 M.J. 398, 404 (C.A.A.F. 2024) (quoting *United States v. Bodoh*, 78 M.J. 231, 236 (C.A.A.F. 2019)).

For a sentencing error, "the test for prejudice is 'whether the error substantially influenced the adjudged sentence.'" *United States v. Edwards*, 82 M.J. 239, 246 (C.A.A.F. 2022) (citing *United States v. Barker*, 77 M.J. 377, 384 (C.A.A.F. 2018)). Prejudice for a forfeited constitutional error is assessed using the "'harmless beyond a reasonable doubt' standard set out in *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)." *United States v. Tovarchavez*, 78 M.J. 458, 460 (C.A.A.F. 2019) (citing *United States v. Jones*, 78 M.J. 37, 45 (C.A.A.F. 2018)).

For such errors, the Government must show the error was harmless beyond a reasonable doubt. *Id*. at 462 n.6.

**Law and Analysis**

In imposing a sentence, military judges are required to consider "the nature and circumstances of the offense." Rule for Courts-Martial (R.C.M.) 1002(f)(1). Additionally, they must take into account the need for the sentence to "reflect the seriousness of the offense" and "provide just punishment for the offense." R.C.M. 1002(f)(3)(A), (C). In determining a sentence, the military judge may consider any evidence that the military judge admitted during presentencing and findings. R.C.M. 1002(g).

SSgt Marin Perez has a right to be sentenced for the actual crime she committed. The value of the property is an indicator of the nature and circumstances of the offense, to include the offense's "seriousness." *Compare MCM*, pt. IV, ¶ 64.d.(1)(a) (setting the maximum punishment of a larceny of property valued under $1,000), *with MCM*, pt. IV, ¶ 64.d.(1)(c) (increasing the maximum punishment for a larceny of property valued over $1,000). Here, the military judge incorrectly believed and found as fact that the value of the property remained "about $21,300" even after Defense Exhibit N contradicted that value and asserted the value was, *at maximum*, half of the alleged value. This is apparent based on the discussion when he reopened the *Care* inquiry and affirmed the providence inquiry because SSgt Marin Perez admitted the value of the property was over $1,000, and "there is evidence that the property has value of $21,300." R. at 87-88. When he determined that the plea was still provident after this discussion, the military judge overlooked Mr. DL's assertion that the property value was specifically *doubled* for the appraisal and instead focused on the "wish-washy" statement that there was an "argument to be made" that the property value is "less." R. at 86-88. If the "wish-washy" comment about the property value just being

"less" was all that had been said in the letter, there would be no substantial conflict in value based on the vagueness and the "about" language. But that is not the facts of this case. This misunderstanding of the offense creates two problems for sentencing.

First, the value of the property *was not* "about $21,300." The value of the property is an essential element and it must be found by the factfinder. *Thompson*, 27 C.M.R. at 121; *MCM*, pt. IV, ¶ 64.c.(1)(g)(i). The military judge found the value of the property to be about $21,300 to find the plea provident. R. at 87-88. And the military judge sentenced SSgt Marin Perez under that erroneous determination when SSgt Marin Perez did not commit a $21,300 larceny as alleged. She did commit a larceny over $1,000, which, even if this Court finds her plea provident, the military judge nevertheless sentenced her for an inflated property value rather than the legitimate market value.

Second, theft of a higher valued property item is a more aggravating crime. The specific value is an aggravating factor that increases the seriousness of the offense, both under the law and common sense. There is a significant difference between stealing property worth "over $1,000" without any other information and stealing property worth "about $21,300." Whether the property value was over a $1,000 or under a $1,000 did not change the maximum punishment allowed at this forum or under the plea agreement here. *Compare MCM*, pt. IV, ¶ 64.d.(1)(a), *and* Article 19(a), UCMJ, 10 U.S.C. § 819(a) (2018), *with MCM*, pt. IV, ¶ 64.d.(1)(c). Nevertheless, if additional punishment was adjudged based on the erroneous belief that the value of the property was higher, even if such punishment was within the allowable range, then SSgt Marin Perez has been materially prejudiced. *See United States v. Cunningham*, 83 M.J. 367, 377 (C.A.A.F. 2023) (C.A.A.F. 2023) (Maggs, J., dissenting) (noting even if the erroneous evidence "only added several months" to the confinement sentence, that would still be material prejudice). This is particularly

true for the confinement time, which, here, was four months. *See Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) ("Any amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration." (cleaned up)). The misunderstanding of the property value materially prejudiced SSgt Marin Perez's substantial right to be sentenced for the correct offense based on a consideration of the nature, circumstances, and seriousness of the offense. R.C.M. 1002(f). This is regardless of the fact she committed a larceny of over $1,000 because the military judge—and SSgt Marin Perez—had an erroneous view and legal understanding of the value element.

This Court should find, after placing the burden on the Government, that the military judge's misunderstanding of the law and facts regarding the property value was not harmless beyond a reasonable doubt. The military judge's misapprehension of the offense, a $21,300 larceny, was an error of constitutional magnitude as it violated SSgt Marin Perez's due process rights concerning her knowing and voluntary waiver against self-incrimination, trial by jury, and confrontation. *Care*, 18 C.M.A. at 539 (quoting *McCarthy v. United States*, 394 U.S. 459, 466 (1969)) ("[I]f a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void."). The military judge failed to properly advise her on the value element, which caused her to admit to a higher value than what the property was legally worth (the market value), making her plea unknowing. *See id.* ("[B]ecause a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."). This constitutional level error grossly increased the severity of the offense such that it is impossible for this Court to be certain the military judge's misapprehension of the value of the property "did not taint the

proceedings or otherwise contribute to [SSgt Marin Perez's] conviction or sentence." *Tovarchavez*, 78 M.J. at 460 (quoting *United States v. Williams*, 77 M.J. 459, 464 (C.A.A.F. 2018)).

**WHEREFORE**, SSgt Marin Perez requests that this Court set aside the sentence.

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 Air Force Government Trial and Appellate Operations Division on 9 April 2025.

Respectfully submitted,

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

| | | |
|---|---|---|
| **UNITED STATES**, | ) | **UNITED STATES' ANSWER TO ASSIGNMENTS OF ERROR** |
| *Appellee,* | ) | |
| | ) | |
| v. | ) | |
| | ) | No. ACM S32771 |
| Staff Sergeant (E-5) | ) | |
| **ANN R. MARIN PEREZ,** | ) | Before Panel 1 |
| United States Air Force | ) | |
| *Appellant.* | ) | 9 May 2025 |

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

## ISSUES PRESENTED

**I.**

**WHETHER APPELLANT'S GUILTY PLEA FOR LARCENY IS IMPROVIDENT BECAUSE A SUBSTANTIAL CONFLICT WAS LEFT UNRESOLVED ON THE ESSENTIAL ELEMENT OF THE PROPERTY'S LEGITIMATE VALUE.**

**II.**

**WHETHER APPELLANT IS ENTITLED TO RELIEF BECAUSE THE MILITARY JUDGE MISAPPREHENDED THE VALUE OF THE LARCENY FOR WHICH HE SENTENCED APPELLANT.**

## STATEMENT OF THE CASE

On 18 December 2023, a special court-martial composed of a military judge sitting alone convicted Appellant, consistent with her pleas, of one charge and one specification of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 921.[1] (*Entry of Judgment*, dated 22 Jan 2024, ROT, Vol. 1.) The military judge sentenced Appellant to four

[1] All citations to the Manual for Courts-Martial are in reference to the 2019 version.

months of confinement, reduction to the grade of E-1, and a bad conduct discharge. (Id.; R. at 108.) The sentence adjudged was within the parameters of the plea agreement which set a minimum confinement term of 30 days and a maximum of 300 days. (*Entry of Judgment*, dated 22 Jan 2024, ROT, Vol. 1; App. Ex. II.) The convening authority took no action on the findings but waived automatic forfeitures until Appellant was released from confinement or her expiration of service for the benefit of her spouse and children. (*Convening Authority Decision on Action*, dated 11 Jan 2024, ROT, Vol. 1.) The remainder of the sentence was approved. (Id.)

## STATEMENT OF FACTS

In late 2022 or early 2023, after obtaining approval for off-duty employment, Appellant was hired by "Homeaglow," a company that provides home cleaning services. (Pros. Ex. 1 at 1.) As a part of her job, Appellant was tasked to clean the home of Ms. NM, where Appellant visited every two weeks over the course of a few months. (Id.) On at least one occasion, while Appellant was cleaning in Ms. NM's bedroom, Appellant decided to take several pieces of jewelry from a jewelry box on Ms. NM's dresser. (Id. at 2; R. at 23, 26-27.) Appellant then sold[2] the items to multiple pawn shops in the Dover, Delaware, area. (Pros. Ex. 1; R. at 59-60.)

On 10 March 2023, Ms. NM first realized that some of her jewelry was missing. (Pros. Ex. 1 at 2; R. at 58.) She noticed that her jewelry box "looked much less full than it normally

[2] While the terms "sold" and "pawned" are used interchangeably throughout the record, the terms hold much different meanings. https://www.merriam-webster.com/dictionary/pawn; https://www.merriam-webster.com/dictionary/sell. This is especially true regarding the pawn shop industry, wherein a "pawn" refers to obtaining a loan from a pawn shop using a valuable item as collateral for the loan's repayment. https://thepawnexperts.com/whats-the-difference-between-pawning-selling. The pawn shop holds the item during the life of the loan and once the loan is paid in full, the pawned item is returned to the customer. Id. A sale simply includes the change in ownership of the item at the time it's traded for cash. Id. In this case, the correct term is "sold," as the facts support that Appellant traded the jewelry in exchange for cash without taking out a loan or maintaining the ability to retrieve the items from the pawn shop.

did." (R. at 58.) Ms. NM began looking for specific items she knew should be in the box but could not find them. (R. at 58-59.) Ms. NM also asked her mother whether she had anything missing and Ms. NM's mother indicated that she was missing a necklace and bracelet, too. (R. at 58.) Because it was late in the evening when she made this discovery, Ms. NM decided to report her missing jewelry to law enforcement the following morning. (Pros. Ex. 1 at 2; R. at 59.)

The Delaware State Police (DSP) department ran a computer search of Appellant's name after receiving Ms. NM's report. (Id.) The search revealed that Appellant had sold to multiple pawn shops in the area a total of five times between 15 February 2023 and 13 March 2023. (Id.) When the DSP detective provided this information to Ms. NM, he suggested she visit the pawn shops that had recently done business with Appellant to see if any of her jewelry was there. (R. at 60.) Ms. NM was able to recover all besides two of the items that had been stolen from her.[3]

On 23 March 2023, Appellant was interviewed by a DSP detective. (Id.) During that interview, Appellant admitted that she took the jewelry from Ms. NM's home. (Pros. Ex. 1 at 2, Attach 4.) Appellant claimed she did it because she was angry about something Ms. NM had said to her, and Appellant did not figure she would be back to clean after that day.[4] (Id. at 38:09.) Appellant also mentioned that she took the jewelry to help with some financial troubles she was facing. (Id.) Finally, Appellant stated during her law enforcement interview that her decision to take and sell Ms. NM's jewelry was inspired by an interaction Appellant previously had with a pawn shop broker when she was selling some of her own jewelry. (Id.) Appellant

[3] Ms. NM described the unrecovered items as a solid gold link bracelet with diamonds and a gold ring with blue sapphires and diamonds. (R. at 60.)

[4] During the plea colloquy Appellant provided the military judge additional detail, explaining that Ms. NM had criticized her cleaning skills and indicated that she was not sufficiently thorough while dusting. (R. at 27.)

explained that the broker had told her to come back if she had any more items she wanted to sell, but Appellant did not have anything else of her own. (Id.) Appellant never told law enforcement that she sold any of her own jewelry and Ms. NM's jewelry simultaneously or in any common transaction.[5] (Id.)

On 5 September 2023, the following charge and specification was preferred against Appellant:

> CHARGE: Violation of the UCMJ, Article 121
>
> Specification: In that STAFF SERGEANT ANN R. MARIN PEREZ [] did, within the continental United States, between on or about 24 February 2023 and on or about 11 March 2023, steal jewelry, of a value of about $21,300.00, the property of [Ms. NM].

(*Charge Sheet*, dated 5 Sep 23, ROT, Vol. 1.) The single charge and specification was then referred to a special court-martial. (Id.)

On 10 December 2023, Appellant submitted an offer to plead guilty to the specification as charged in exchange for a narrowed range of confinement available at sentencing. (App. Ex. II.) Specifically, the terms of Appellant's offer set a floor of 30 days and a ceiling of 300 days' confinement. (App. Ex. at 2; R. at 42.) No other conditions accompanied Appellant's offer to plead guilty. (Id.) The convening authority accepted Appellant's offer. (App. Ex. at 4.; R. at 42.) Appellant entered into a stipulation of fact which provided, in relevant part:

> On 29 June 2023, Ms. [NM] went to Jeweler's Loupe, Inc. in Dover, Deleware to have some of her jewelry that was stolen appraised. See Attachment 5. Mr. [DL] appraised six pieces of jewelry that had been stolen, pawned, and recovered [by] Ms. [NM]. The total amount of the six pieces that were appraised was valued at $21,300.

(Pros. Ex. 1 at 2.) The referenced attachment consisted of six individual reports documenting a description of each item and his estimated "Replacement Value." (Pros. Ex. 1, Attachment 5.)

[5] *Compare with* App. Br. at 2 ("She pawned these items along with some of her own jewelry.").

The "Replacement Value" stated on each of the six reports amounted to a combined total of $21,300. (Id.)

On 18 December 2023, Appellant was arraigned and entered a plea of guilty. (R. at 10-11.) During the plea colloquy, the military judge explained each element of the offense and provided the relevant definitions. (R. at 21-22.)[6] Appellant then told the court, in her own words, why she believed she was guilty:

> On [24 February 2023][7], while I was inside Ms. [NM]'s home cleaning, I took jewelry belonging to Ms. [NM]…I took these items [] from Ms. [NM]'s dresser while I was cleaning her residence. After I [was] done cleaning Ms. [NM]'s that day, I left [with] Ms. [NM]'s jewelry and drove back to my home where I kept the jewelry for a few days. I brought Ms. [NM]'s jewelry to a local pawn shop and [] told the pawn shop I was getting rid of the jewelry on behalf of my mother. At [the] pawn shop, I received [] $1,650 for all the jewelry and therefore I do believe and admit that Ms. [NM]'s jewelry was a greater value of $1,000.

(R. at 23.)

Specifically concerning the value of the items, Appellant stated,

> ACC: My attorney discussed with me the evidence uncovered by the pawn shop to include weight, style, and carats. I recognized them by the description of the evidence and photos included in evidence. These items, as I took those — sorry — and these items that I took from Ms. [NM]'s home, I do not know their exact value [] but I received approximately $1,650 from the pawn shop so I believe that exceeds $1,000.
>
> MJ: I'm saying I assume you don't have any, you know, professional experience in appraising jewelry, is that correct?
>
> ACC: Yes, that's correct sir.

---

[6] The military judge began to discuss "value" but did not complete his thought, stating, "When the property is alleged to have a value of – disregard that. Do you understand the elements and definitions as I've read them to you?" (R. at 22.)

[7] Appellant originally stated that the date was 8 March 2024, but later clarified that she had misspoken, and meant to say 24 February 2023. (R. at 26.)

MJ: So, you did not know the value of the — of the property at the time that you took it?

ACC: Yes — or no, I didn't know the value.

MJ: Okay. And I understand that you — when you pawned it you received $1,650, but within the stipulation of fact there is an appraisal that was done by someone who is a professional of appraising jewelry and he lists the value of the property at $21,300. Have you had an opportunity to kind of look at that appraisal and discuss that appraisal with your defense counsel?

ACC: Yes, Your Honor.

MJ: And based upon your discussions with defense counsel and having an opportunity to review that evidence, are you confident that that is the value of the property that you took?

And I realize you don't have any personal knowledge but, you know, just — knowing that this individual's professional — do you have confidence in that appraisal that — that that was the value of the property? So, you can just talk with your defense counsel.

[The accused consulted with her defense counsel.]

ACC: Yes, Your Honor.

MJ: So, just to make sure because there was a little bit of a break there, you — based upon — again, you don't have personal knowledge, but based upon reviewing the evidence and discussing with your defense counsel, you are confident that the value of the property was about $21,300?

ACC: Yes, Your Honor. (R. at 29-30.)

The military judge asked counsel for both sides whether any additional inquiry was necessary. (R. at 31.) The trial counsel and the military judge had a brief discussion concerning Appellant's statements that she took jewelry from Ms. NM's house on two different dates. (R. at 31-32.) The military judge explained that the date(s) Appellant provided aligned with the charged timeframe and, because it was not charged as divers occasions, she only needed to admit

to taking the jewelry on one date within that range "in order to plea[d] provident." (Id.) After that, both parties answered negatively concerning the need for further inquiry and the military judge moved on to discussion of the maximum punishment authorized as well as the terms of the plea agreement. (R. at. 32-44.) Appellant's statements during this portion of the colloquy did not present any concerns from the parties or military judge. (Id.)

Once finished, before entering any findings, the military judge stated to Appellant, "now, I want you to take a moment [] and consult again with your defense counsel, and after you've done so let me know whether you still want to plead guilty." (R. at 47.) Appellant consulted with her counsel and then reassured the military judge that she did want to stick with her plea. (Id.) The court then entered its findings concerning providence and found Appellant guilty of the charge and specification. (Id.) After entering these findings, the military judge told Appellant that she "may request to withdraw [her] guilty plea at any time before the sentence is announced, and if [she had] a good reason for [the]request, [the court would] grant it." (R. at 48.)

During the Government's sentencing case, trial counsel called Ms. NM as a witness to discuss the circumstances surrounding the incident and the impact it had on her and her family. (R. at 57.) After hearing from Ms. NM, the military judge decided to re-open the Care inquiry. (R. at 63.) He believed that Ms. NM's testimony may have suggested that some of the stolen jewelry included in the charged offense actually belonged to Ms. NM's mother.[8] (R. at 63.)

[8] It should be noted that the record does not support the military judge's understanding of Ms. NM's testimony. Ms. NM merely stated that her mother lived in the house with NM and NM's husband and that NM's mother told NM that she, too, was missing a couple of jewelry items on 11 March 2023. (R. at 56-58.) Ms. NM also indicated that the mother had a separate bedroom. (R. at 57.) Ms. NM never stated that she kept any of her mother's jewelry in the bedroom NM shared with her husband or in her jewelry box. (R. 57-65.) Finally, Ms. NM testified thatshe only learned of her mother's missing jewelry after directly asking about it,not from looking in her own jewelry box. (R. at 57.) Ms. NM's testimony did not provide that any of the eight items

Upon reopening the inquiry, the military judge stated to Appellant, "So I wanted to ask you based upon you know the fact that some of the jewelry belonged to Ms. [NM]'s mother, do you still agree that the property was in her possession?" (R. at 64.) Appellant responded that she took the jewelry from the jewelry box that was located in Ms. NM's room, a room that NM shared with her husband and that Appellant had no legal right to. (R. at 64-65.) Satisfied by Appellant's answers, the military judge stated that he still found the plea provident. (R. at 65.)

The government then rested its sentencing case, and the defense presented its evidence, including an unsworn statement by Appellant. The defense also presented a memorandum, dated 16 December 2023, and prepared by Mr. DL, the same jeweler who conducted the appraisal of Ms. NM's jewelry identified in Prosecution Exhibit 1(R. at 65-85.) The memorandum provided, in relevant part:

> The appraised value of each of the pieces of jewelry does not reflect the exact cost of how much each piece[] of jewelry would be listed and sold for on the market today. Instead, the appraised value combines several insurance factors and doubles the proposed value of the jewelry to reflect inflation and other factors. As such, the appraised value listed for each of the items has been inflated and the actual value of each of the pieces is less. Therefore, although combined the total appraised value in my report is $21,300, I can confidently tell all parties that there is an argument to be made that the jewelry is not worth that much and the value is less.

(Def. Ex. N.)

Before going to sentencing arguments, the military judge, *sua sponte,* decided to open the Care inquiry for the third time, this time based on some new concerns he had about the value of the jewelry which had come up in light of Defense Exhibit N. (R. at 86.) He explained that that

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she reported stolen, including the two unrecovered pieces, belonged to anyone besides Ms. NM. (R. at 57-63.) To the contrary, Ms. NM explained during her testimony the sentimental value of many of the pieces which were gifted to her by her husband on various special occasions during their 48-year marriage. (R. at 62.)

the statements made by Mr. DL on 16 December 2023 seemed to undermine the value Mr. DL stated in the appraisal reports he prepared on 29 June 2023 which were previously admitted as Attachment 5 to Prosecution Exhibit 1. (Id.; Pros. Ex. 1, Attachment 5.) Specifically, the military judge stated:

> MJ: Mr. DL stands by his appraisal and he explains what goes into appraisal and doesn't say specifically what the current market value would be. Says that there is some inflation that goes into evaluation and that — it's a little — it's a little wishy washy. "So, I can confidently tell you that there's an argument to be made that the property may be worth less."[9] Not that it is worth less, but there's an argument to be made and so there is some on that. The government — and the government has charged it as a value of about $21,300 so it doesn't have to be exactly $21,300 and the court has information indicating [phonetic] is not $21,300 but is not clear asking what the exact dollar amount is. So there is a little bit of confusion on that issue. So I kind of wanted to address that.
>
> MJ: Let me ask [Appellant] first, [] are you confident, based upon your discussion with counsel, reviewing the evidence in this case, that the value of the property was at least $1,000 or greater?
>
> ACC: Yes, sir.
>
> MJ: So that's the statutory as far the breakdown in the military. It's less than a $1000 or — a $1000 or less or more than $1000, and so I may not have asked the questions though. So you agree that it's more than $1000 in price?
>
> ACC: Yes, Your Honor.
>
> MJ: And so that satisfies that the charge about, again, the court has information that says we don't know that's exactly what it was but the government charged you about amount as opposed to the exact amount. And I don't have enough — the letter doesn't provide any amount as to what may be otherwise be legitimate argument [would be for someone] [phonetic]. So, I think given that[,] in order to plead provident, you don't have to plead to an offense of more than $1000 and there is evidence that the property has value of $21,300 or that

[9] The quoted statement matches the last sentence of the last paragraph of Mr. DL's memorandum verbatim suggesting that the military judge was likely reading from the memorandum rather than using his own words. (Def. Ex. N.)

> there could be some question, but again, with the about amount, I think that the plea is still provident based upon that but I just wanted to check. Trial Counsel, do you have any concerns or questions about that?
>
> DTC: Your Honor, nothing further from the government on that.
>
> MJ: Okay and Defense Counsel, anything further or are you— let me ask first, anything further?
>
> DC: No, Your Honor.
>
> MJ: And are you satisfied that you're in client's plea is provident based upon this additional information.
>
> DC: Yes, Your Honor.
>
> MJ: Okay. And, Staff Sergeant Marin Perez, are you — you still want to stay with your plea?
>
> ACC: Yes, Your Honor.

(R. at 86.)

"Value" was discussed for the final time during the hearing – and for the first time by trial defense counsel – during the Defense's sentencing argument, which consisted of the following:

> Sir, we went through a Care inquiry and you asked [Appellant] question, upon question, upon question, upon question of do you understand the rights you're giving up by pleading? Do you understand the government would have to prove everything? You could have witnesses. You get cross-examination. You can have an expert appraiser come in. You can have all of these things and she said, not necessary, guilty. I understand what I've done.
>
> Sir, this is even after Defense Exhibit N. This is even after the original appraiser came back and said, actually, let me explain what went into that $21,300. In that paragraph, it said the appraised value combined several insurance factors and doubles the proposed value of the jewelry to reflect inflation and other factors. As such, the appraised values listed for each of the items has been inflated and the actual of items — of value of each piece is less. Therefore, although the combined and total appraised value of the jewelry in

> my report is $21,300, I can confidently tell all parties that there's an argument to be made that jewelry's not worth that much and the value of the jewelry is less.
>
> Sir, during that same *Care* inquiry, [Appellant] told you she got $1,650. Sir, you'll also note that from the stipulation of fact and all of the receipts from the Trading Post, there's also items on there that were not Ms. NM's.[10]

(R. at 96-97.)

Trial counsel provided a brief rebuttal argument, which mostly addressed and corrected some factual inconsistencies stated in the Defense's argument. (R. at 103-05.) The court then went into recess for deliberations. (R. at 107-08.)

**I.**

**APPELLANT'S GUILTY PLEA FOR LARCENY WAS PROVIDENT AND THE FACTS PRESENTED WERE SUFFICIENT TO SUPPORT EVERY ELEMENT OF THE OFFENSE.**

***Standard of Review***

This Court reviews a military judge's decision to accept a plea of guilty for abuse of discretion. *See* United States v. Forbes, 78 M.J. 279, 281 (C.A.A.F. 2019) (citation omitted). In reviewing the providence of a plea, a military judge abuses his discretion only when there is "a substantial basis in law and fact for questioning the guilty plea." United States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008) (internal quotation marks and citation omitted). "[T]he military judge's determinations of questions of law arising during or after the plea inquiry are reviewed de

[10] The stipulation of fact does not discuss Appellant selling her own jewelry to any pawn shops. (Pros. Ex. 1.) The record is unclear concerning the source of the two unclaimed items included on the Trading Post receipt, dated 8 March 2023, namely two necklaces described as 13.5 grams in weight in 14k gold and 7 grams of gold over 925 silver. (Pros. Ex. 1; R. at 60-64.) Appellant, however, never claimed that these items were hers and, by contrast, told law enforcement on 23 March 2023 that she stole and sold Ms. NM's jewelry only after running out of her own things to sell. (Pros. Ex. 1, Attachment 4.)

novo." Id. at 321. "[A]ppellant bears the burden of establishing that the military judge abused that discretion, i.e., that the record shows a substantial basis in law or fact to question the plea." United States v. Phillips, 74 M.J. 20, 21-22 (C.A.A.F. 2015) (citation omitted).

In a guilty plea, the military judge must establish on the record the factual bases that show that "the acts or the omissions of the accused constitute the offense or offenses to which he is pleading guilty." United States v. Care, 40 C.M.R. 247 (C.M.A. 1969) (citation omitted). "This factual predicate is sufficiently established if the factual circumstances as revealed by the accused himself objectively support that plea." United States v. Barton, 60 M.J. 62, 64 (C.A.A.F. 2004) (citing United States v. Davenport, 9 M.J. 364, 367 (C.M.A. 1980) (quotations omitted)). As a result, "the issue must be analyzed in terms of providence of his plea not sufficiency of the evidence." United States v. Faircloth, 45 M.J. 172, 174 (C.A.A.F. 1996).

While the military judge must find an adequate factual basis to support the plea, that is "an area in which [appellate courts] afford significant deference." United States v. Jordan, 57 M.J. 236, 238 (C.A.A.F. 2002). In reviewing the providence of Appellant's guilty plea, this Court considers Appellant's colloquy with the military judge, as well as any inferences that may be reasonably drawn therefrom. United States v. Carr, 65 M.J. 39, 41 (C.A.A.F. 2007). This Court may also consider in its review those facts agreed to by the accused in a stipulation of fact which is admitted at trial. United States v. Sweet, 42 M.J. 183, 185-86 (C.A.A.F. 1995).

***Law***

The text of Article 121 provides that the offense of larceny requires the following elements: (1) the accused wrongfully took, obtained or withheld certain property from the possession of the owner or of any other person; (2) the property belonged to a certain person; (3) the property was of a certain value, *or of some value*; and (4) the accused intended to

permanently deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any person other than the owner. MCM, Part IV 64.b.(1)(b).

Separate from the elements of the offense, a factual determination should be made concerning the stolen property's value to determine the maximum punishment authorized for sentencing. MCM, Part IV 64.d.(1)(a)(c). Where the value is $1,000 or less, the statute authorizes a bad conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year. MCM, Part IV 64.d.(1)(a). For non-military property valued at more than $1,000, the statute authorizes a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years. MCM, Part IV 64.d.(1)(c).

The Manual provides in the explanations section of the article "value is a question of fact to be determined on the basis of all of the evidence admitted." MCM, Part IV 64.c.(1)(g)(i). It further explains, "as a general rule, the value of stolen property [other than government property] is its legitimate market value at the time and place of the theft." MCM, Part IV 64.c.(1)(g)(iii). However, the question of value and "legitimate market value" can be quite nuanced, leaving room for more than one correct answer. Indeed, the explanation lists multiple considerations – and methods – a fact finder may use to determine the value of stolen property:

> If this property, because of its character or the place where it was stolen, had no legitimate market value at the time and place of the theft or if that value cannot readily be ascertained, its value may be determined by its legitimate market value in the United States at the time of the theft, or by its replacement cost at that time, whichever is less.
>
> Market value may be established by proof of the recent purchase price paid for the article in the legitimate market involved or by testimony or other admissible evidence from any person who is familiar through training or experience with the market value in question.

> The owner of the property may testify as to its market value if familiar with its quality and condition. The fact that the owner is not an expert of the market value of the property goes only to the weight to be given that testimony, and not to its admissibility. *See* Mil. R. Evid. 701.
>
> When the character of the property clearly appears in evidence—for instance, when it is exhibited to the court-martial—the court-martial, from its own experience, may infer that it has some value. If as a matter of common knowledge the property is obviously of a value substantially in excess of $1,000, the court-martial may find a value of more than $1,000.
>
> Writings representing value may be considered to have the value—even though contingent—which they represented at the time of the theft.

MCM, Part IV 64.c.(1)(g)(iii).

"For this Court to find a plea of guilty to be knowing and voluntary, the record of trial must reflect that the elements of each offense charged have been explained to the accused by the military judge." United States v. Schell, 72 M.J. 339, 345 (C.A.A.F. 2013) (quoting United States v. Redlinski, 58 M.J. 117, 119 (C.A.A.F. 2003) (internal quotations omitted). "[A]n accused has a right to know to what offense and under what legal theory he or she is pleading guilty." United States v. Medina, 66 M.J. 21, 26 (C.A.A.F. 2008). "The providence of a plea is based not only on the accused's understanding and recitation of the factual history of the crime, but also on an understanding of how the law relates to those facts." Id. (citing Care, 18 U.S.C.M.A. at 538-39). "An essential aspect of informing [a]ppellant of the nature of the offense is a correct definition of legal concepts." *United States v. Negron*, 60 M.J. 136, 141 (C.A.A.F. 2004). "If the military judge fails to explain the elements to an accused, it is reversible error unless 'it is clear from the entire record that the accused knew the elements, admitted them freely,

and pleaded guilty because [*11] he was guilty.'" *Schell*, 72 M.J. at 345 (quoting *United States v. Jones*, 34 M.J. 270, 272 (C.M.A. 1992)).

***Analysis***

The military judge appropriately determined that every element of the charged offense was satisfied before accepting Appellant's plea as provident and finding her guilty. He did not abuse his discretion in finding that there was evidence before the court that the value of the jewelry was *about* $21,300, as charged.

Appellant argues that her plea was improvident because an "'essential element' of the charged offense remained unresolved by the military judge." (App. Br. at 6.) She makes three points in support of her claim, namely that: (1) the government "was required to charge, and prove, a 'certain value' for the larceny;" (2) the government charged an "incorrect specific value" in stating an appraisal value instead of the "legitimate market value;" and (3) the "erroneous charging choice on the property's value created a substantial conflict the military judge did not resolve." (App. Br. at 6-8.) Each of Appellant's arguments is addressed separately below.

1. *While the government was required to charge a "certain value," it was not required to assign a precise dollar amount to the property's value by which it was bound to specifically prove beyond a reasonable doubt.*

None of the four elements of the offense, as set forth above, required the government to assign and charge a specific monetary value to stolen property in order to sustain a conviction for larceny. MCM, Part IV 64.b.(1)(b). Likewise, nothing in the text of the offense mandates that the government then, in turn, prove that *exact* value at trial beyond a reasonable doubt. Id. MCM, Part IV 64.b.(1)(b). Instead, the element can be met by alleging and proving only that the stolen property had *some* value. Id.

In support of her position, Appellant briefly notes that the model specification contains a "blank space where a specific value should be inputted." (App. Br. at 6). Additionally, she cites to United States v. Thompson. (App. Br. at 6; citing 27 C.M.R. 119, 121 (C.M.A. 1958).)

Addressing the first point, the blank space in the sample specification supports nothing other than the fact that there is more than one way to charge the offense; it is merely a tool for reference. And concerning Appellant's second point, the government fully agrees that "value is an essential element of pleading and proof in the offense of larceny," as stated in Thompson. (App. Br. at 6.) *See* MCM, Part IV 64.b.(1)(b)(3). It disagrees with Appellant, however, regarding the degree of specificity in which value must be charged and, subsequently, proved, particularly when analyzing a case involving a guilty plea. Also, the word "specific" – or phrase "specific value" – is notably absent from the quoted text from Thompson. (Id.) 27 C.M.R. at 121.

In United States v. Barton, CAAF addressed what is required to support the "value" element under Article 121. 60 M.J. 62, 65 (C.A.A.F. 2004). The Barton Court explained that the element concerning value "is not a complex legal element" and "does not require an intricate application of law to fact." Id. On the question of providence, the pertinent question "is whether the record says enough to objectively support an admission to each element of the offense." Id. at 65. Here, the specification was not charged in such a way that it required a finding that the stolen property was of the exact value stated, in that it included "a value of *about* $21,300." (*Charge Sheet*, dated 5 Sep 23, ROT, Vol. 1) (emphasis added).) This was pointed out and considered by the military judge. (R. at 86-87.) And Appellant acknowledges this charging language but still maintains that the amount proved was not even close to $21,300. (App. Br. at 8, 10.) Simultaneously, Appellant fails to cite any facts in the record which conclusively

established that the jewelry's actual market value was any specific amount which would have precluded the military judge from making the finding that the value was *about* $21,300. Instead, she now, after offering to plead guilty to the offense as charged, entering into a stipulation of fact agreeing that the value was about $21,300, and then actually *telling the military judge* that the value was $21,300, she has decided it was actually something more like $10,650. The government had no opportunity to cure or clarify this issue because they had no reason to know it would be an issue. Providing relief to an appellant under such circumstances simply would not serve the interests of fairness or justice.

Appellant further fails to explain how a true "legitimate market value" of only $10,650, even if supported by the record, would have tended to negate her guilt, provide her with a viable defense to the larceny she admits she committed, or otherwise render her plea improvident. Appellant had every ability to contest the elements of the offense at a litigated trial if she wished, withdraw her plea, consult with her counsel, or simply say she did not understand. But she instead chose to plead guilty and maintained her desire to plead guilty throughout the proceedings.

Appellant has established no basis in law to question the plea on the stated grounds and this Court should, therefore, deny her assignment of error on this point.

2. *The value stated in the specification reflecting the appraisal amount was not "incorrect."*

Appellant claims that "the [g]overnment charged an essential element that was legally wrong: the jewelry's value."[11] (App. Br. at 10.) In support of this argument, she summarily

[11] Although this statement was made in Appellant's third point, it seems relevant to the discussion of the second point, which concerns the preliminary question of whether the

concludes that an appraisal value is an "incorrect specific value" that cannot be considered the "legitimate market value." (App. Br. at 7.) While the Manual states that "value" *generally* means the "legitimate market value," it does not provide that there is but one "legitimate market value" for any given item. MCM, Part IV 64.c.(1)(g). Similarly, it does not indicate that only one correct determination can be made, or that anything beyond the one correct value is considered legally wrong. Id.

The statute's explanation of "value" does not refer to the amount a pawn shop would pay to purchase the item(s) for resale to the public, nor is it described as the amount at which the pawn shop attempts to resell the item(s) for profit. Id. Moreover, the term's explanation does not require that the stolen property's value be limited to that which might be received from a private sale of the items in used condition, which is what Appellant seems to argue. Id. (App. Br. at 9-10, "the appraisal value is not the 'cost of how much each of the pieces [] would be listed and sold for on the market today'" (citing Def. Ex. N at 1).) To the extent Appellant argues that the legitimate market value is what she could have listed and sold the items for to the general resale market – as opposed to a pawn shop – she is mistaken. *See, e.g.,* Windham, 15 U.S.C.M.A. 523; Frost, 22 U.S.C.M.A. 233("Article 121 is not concerned with the pecuniary benefits realized by the thief.")

What the Article's explanation section *does* discuss is that a recent retail receipt for the stolen property could demonstrate its legitimate market value, which seems to suggest that legitimate market value could be considered the replacement cost, or retail value, of the items in question. MCM, Part IV 64.c.(1)(g)(iii). The statute's specific language concerning "recent"

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government's "charging choice" using the appraisal value was, in fact, "erroneous." (App. Br. at 8.)

retail receipts also shows that factors such as depreciation, appreciation, or inflation, as applicable, may be relevant to the analysis. Id. Additionally, the explanation of value provides that, "[w]hen the character of the property clearly appears in evidence—for instance, when it is exhibited to the court-martial—the court-martial, from its own experience, may infer that it has some value." Id.

Finally – and perhaps most importantly – the statute specifically states that, "[i]f as a matter of common knowledge the property is obviously of a value substantially in excess of $1,000, the court-martial may find a value of more than $1,000."[12] Id. The record in this case contained photos of the stolen jewelry as well as an appraisal report prepared by a knowledgeable jeweler which described six of the stolen items in detail and included the estimated "replacement cost" for each. (Pros. Ex. 1, Attachment 5.) The "replacement cost" could be reasonably interpreted to mean the cost to re-purchase the same or similar items, or "retail value" which is consistent with the considerations allowable under the Article. MCM, Part IV 64.c.(1)(g)(iii). Applying "common knowledge," any person who has purchased or priced jewelry at some point in their life could have reasonably concluded based on the description of the items in the appraisal report (14K gold, diamonds, etcetera) that the total value easily could have been *about* $21,000. This conclusion was not overcome by anything in the record and was explicitly permissible under MCM, Part IV, para. 64.c.(1)(g)(iii).

[12] The portion of the text requires nothing more than a finding as to whether the value was more than $1,000, suggesting that the offense is only concerned with whether or not the value exceeded the $1,000 threshold to support a finding of value. This further refutes Appellant's claim that there was a "correct" value to be charged and proved and that the value charged was "legally wrong." Id. (App. Br. at 8-11.)

For the reasons stated above, Appellant has provided no basis in law for this Court to question her plea on the stated grounds. Therefore, this Court should deny this assignment of error.

3. *The military judge resolved any potential conflict concerning the property's value sufficient to ensure that Appellant's plea was provident.*

Under the final point, Appellant asserts that because the jewelry's precise value was not clearly demonstrated, the military judge should have rejected her plea of guilty. (App. Br. at 8-11.) Overall, Appellant's argument seems to conflate the legal standard concerning a question of providence with that of factual and legal sufficiency which is not appropriate. *See* Faircloth, 45 M.J. 172, 174.

The military judge was not required to receive conclusive evidence that the jewelry's value mirrored the exact number on the charge sheet before he could determine Appellant's plea of guilty *provident*. Barton, 60 M.J. at 65 (explaining that "[Value] is not a complex legal element. An understanding of this element does not require an intricate application of law to fact."). The question, instead, is "whether the record says enough to objectively support an admission to each element of the offense." (Id.)

Here, Appellant was charged with a larceny offense concerning property valued at *about* $21,300 and facts in the record objectively support Appellant's admission to that fact. (App. Br. at 9; R. at 86-88.) Appellant admitted and agreed that $21,300 accurately reflected the jewelry's "legitimate market value." (R. at 27-29; Pros. Ex. 1 at 2.) The appraisal reports prepared by Mr. DL state that the six pieces of jewelry inspected had a combined total appraised "Replacement Cost" value of $21,300. (Pros. Ex. 1, Attachment 5.) Appellant stated that she had reviewed the

evidence and the appraisal report in detail with her trial defense counsel and that review was part of her basis for determining the jewelry's value and knowing it was about $21,300.[13] (R. at 29.)

And the military judge was permitted to draw reasonable inferences from the evidence before him. *See, e.g.,* Carr, 65 M.J. at 41. Appellant added that she received $1,650 from the pawn shop for the items she stole from Ms. NM, which was supported by the receipts from three separate transactions. (R. at 24-26; Pros. Ex. 1, Attachment 2.) A reasonable person could find that amount was much less than the legitimate market value, as the pawn shop presumably purchased the items to resell at a profit but still at a below-market price, as pawn businesses do. (Id.)

Though not included in the specification, Appellant also stipulated that she actually took more jewelry from Ms. NM than NM recovered: a diamond ring and a gold and diamond necklace. (Pros. Ex. 1 at 2; R. at 56-57.) She paid $400 back to Ms. NM for the ring, which she referred to as "restitution," but never paid anything back for the necklace. (Id.) While nothing in the record exists to establish the actual market value of the ring and necklace, these facts nonetheless support that the appraised value of $21,300 did not account for two other pieces of jewelry Appellant took as a part of the same larceny. While it is unclear why Appellant's trial defense counsel decided to admit a statement from Mr. DL undermining both his own, and Appellant's statements to the court, it was not fatal to the plea. The military judge could have considered that the appraised value, even if overstated, was not a complete assessment of the larceny's value, as it only accounted for the recovered items.

Also, if there were any real question as to whether the record supports "about 21,300," Appellant and her counsel were aware of the potential discrepancy and defenses. And the

military judge went to great lengths to ensure she was aware and that she still wanted to plead guilty. (R. 63-64, R. 86-88.) Appellant's counsel had the appraisal report to review and challenge – they even had the opportunity to speak to him and write up a memorandum – but they chose not to. (Def. Ex. N.) As her trial counsel admitted during the sentencing argument, appellant wanted to plead guilty because she was convinced of her own guilt.

> Sir, we went through a Care inquiry and you asked [Appellant] *question, upon question, upon question, upon question* of do you understand the rights you're giving up by pleading? Do you understand the government would have to prove everything? You could have witnesses. You get cross-examination. You can have an expert appraiser come in. You can have all of these things and she said, not necessary, guilty. I understand what I've done.

(emphasis added) (R. at 96-97.) Based on these facts, it is reasonable to conclude that Appellant was aware of the elements to which she was pleading – particularly concerning the significance of the property's value – and that a sufficient factual basis for the same existed. *See generally* Barton, 60 M.J. 62, 65 ("We cannot lose sight that this is a guilty plea case" and that "a guilty plea case is less likely to have developed facts."); *also see* United States v. Robinson, No. ARMY 20150088, 2017 CCA LEXIS 93 *11 (A. Ct. Crim. App. Feb. 6, 2017) ("This concern is all the more so when the issue in question was never adequately litigated at trial. Had this been a contested case, or had appellant adequately raised the issue at trial, it is likely that the facts would have been developed one way or the other.").

Appellant cites to Garcia, which states, "[w]here an accused sets up a matter inconsistent with the plea, the MJ must either resolve the inconsistency or reject the plea." 10 U.S.C. § 845(a); United States v. Garcia, 44 MJ 496 (C.A.A.F. 1996). But here, as discussed above, the Appellant did not set up any matters inconsistent with her plea. To the contrary, Appellant consistently maintained throughout the proceedings that she understood her right to a

trial, including the associated benefits (witnesses, experts, panel of members, etc.), and continuously reaffirmed her desire to plead guilty. (R. at 86.)

Even if she had set up any matters inconsistent with her plea, the military judge was not necessarily required to reject it. Instead, as Appellant acknowledges, he had the ability to resolve any inconsistency, and the military judge went above and beyond to do exactly that. For example, despite Appellant's consistent responses stating that she understood the information provided to her, the military judge still took care to re-ask many of the same questions and test some of Appellant's "yes" answers by having her explain them. (R. at 13-43.) Each time the military judge identified any matters which were even potentially confusing or inconsistent with Appellant's plea, he reopened the Care inquiry to address them. (R. at 64-67, 86-88.)

Specifically relating to the possible "value" inconsistency, the military judge was diligent in ensuring that Appellant understood the "statutory breakdown" concerning value. (R. at 87.) Indeed, it was only after reopening the Care inquiry for the third time, *after* Appellant had already been found guilty, allowing her even more time to discuss with her legal counsel, having her reassure the court she still wanted to plead guilty, *and* having her defense counsel confirm they had no providence concerns, that the military judge was ready to move on. (R. at 86-88.)

The measures taken by the military judge were more than sufficient to resolve any possible question concerning the providence of her plea. Nothing more was required for the military judge to accept the plea and find Appellant guilty.

Finally, even if this Court finds the government was required to prove a specific $21,300 value, or that there were some error demonstrated on the part of the military judge, the analysis should not end there. *See* United States v. Owens, No. ARMY 20121071, 2014 CCA LEXIS 344 *14-15 (A. Ct. Crim. App. May 30, 2014). So long as it is clear from the entire record that the

accused knew the elements, admitted them freely, and pleaded guilty because she was guilty, this Court can affirm the conviction as to the lesser included offense of larceny of non-military property with a value of $1,000 or less. Id.

Here, the record is clear that the Appellant knew the elements, including the concept of "value," admitted them freely – and repeatedly – and pleaded guilty because she was, in fact, guilty. *See* United States v. Schell, 72 MJ at 345 (quoting United States v. Jones, 34 M.J. 270, 272 (C.M.A. 1992); *also see* Owens, No. ARMY 20121071, 2014 CCA LEXIS 344 *14-15.

Appellant had every opportunity to have her case tried on the merits, but instead chose to plead guilty which she did not have to do. (*See, e.g.*, R. at 5-47, 63-65, 87-88.) She does not provide any legal justification as to why the military judge should have rejected her plea or why this Court should now question it on appeal. 10 U.S.C. § 853a. Therefore, this assignment of error should be denied.

## II.

## THE MILITARY JUDGE DID NOT MISAPPREHEND THE VALUE OF THE STOLEN PROPERTY NOR DID HE BASE THE ADJUDGED SENTENCE ON ANY IMPROPER OVERSTATEMENT OF THE PROPERTY'S VALUE.

### *Standard of Review*

Where it is determined that a sentencing error was committed, "the test for prejudice is 'whether the error substantially influenced the adjudged sentence.'" United States v. Edwards, 82 M.J. 239, 246 (C.A.A.F. 2022) (citing United States v. Barker, 77 M.J. 377, 384 (C.A.A.F. 2018)). The Government "bears the burden of demonstrating that the admission of erroneous evidence was harmless." Id. at 246.

### *Law and Analysis*

*The military judge did not misapprehend the value of the stolen jewelry, nor did he base the adjudged sentence on any misapprehended value.*

As an initial matter, Appellant fails to establish that any sentencing error occurred. She claims that the military judge "misapprehended" the value of the stolen jewelry and then based the adjudged sentence on an overstated value. (App. Br. at 11.) But the record demonstrates the stark opposite. It shows that the military judge actually did recognize the possibility that the market value of the jewelry could have been less than the appraisal value, or at least that there was "an argument to be made" that it was less than $21,300. (R. at 86-88.) In fact, this was the reason he opened the third plea colloquy. (Id.)

Next, Appellant states that the "theft of a higher valued property item is a more aggravating crime" and that "specific value is an aggravating factor that increases the seriousness of the offense, both under the law and common sense." (Id. at 13.) Again, Appellant fails to point to anything specific in the law or record to support her contentions. As pointed out above, the record is far from conclusive as to the jewelry having a legitimate market value of $10,650. Moreover, the record objectively supports Appellant's admissions that she stole property of "about $21,300." The fact that the military judge found her plea of guilty to larceny of "about $21,300" provident does not mean it is all he considered in adjudging Appellant's sentence.

It is likely that he also considered Defense Exhibit N, his own common knowledge, and the $400 Appellant paid in restitution to N.M. for items she was unable to recover. Appellant's conclusory statements concerning the factors the military judge considered and the weight he assigned to each in deciding on a sentence entirely lack any factual basis. Moreover, Appellant has offered no evidence that absent the alleged error, the sentence would have differed . (App. Br. at 11.)

*The military judge's determination of the stolen property's value, even if excessive, was inconsequential to the sentence available and that adjudged and, therefore, could not have prejudiced Appellant.*

Even assuming arguendo that Appellant were able to establish that an error occurred, she has not demonstrated that the error had a substantial impact on the sentence adjudged.

While a dishonorable discharge, total forfeitures, and five years of confinement is authorized for the offense of stealing property with a value exceeding $1,000, the military judge's discretion in adjudging a sentence was substantially limited by the forum and the terms of the plea agreement. (MCM, Part IV 64.d.(1)(a); 10 U.S.C. § 853a; App. Ex. II.) In this instance, the military judge was authorized to sentence Appellant to no fewer than 30 days but no more than 300 days' confinement, a bad conduct discharge, forfeiture of two-thirds of her monthly pay, and reduction in grade to E-1.[14] In comparison, the offense of larceny involving property valued at under $1,000 at a special court-martial would have authorized a sentence that included a bad conduct discharge, a year of confinement, forfeiture of two-thirds pay per month, and reduction in grade to E-1, subject to the limitations in the plea agreement. The available punishment was identical, regardless of the stolen property's value.

Here, while the military judge was authorized to sentence Appellant to up to 300 days of confinement, he chose only to adjudge only four months. These facts certainly do not suggest that he considered an excessive value for the stolen property, or that he used that value as an aggravator. Where the military judge did not even adjudge the harshest sentence available for the crime of larceny of property valued under $1,000, no reasonable conclusion could be drawn

[14] A dishonorable discharge is not authorized at a special court-martial. (Id.) Similarly, no more than one year of confinement or forfeiture of more than two-thirds pay should be adjudged. (Id.) Finally, the plea agreement required the military judge to sentence appellant to no fewer than 30 days of confinement, but no more than 300 days. (App. Ex. II at 2.)

that the military judge must have improperly relied on an overstated or exaggerated value in deciding this sentence. Based on this, this Court should be "confident that the military judge would have adjudged the same sentence absent the error" Appellant alleges. Owens, 2014 CCA LEXIS 344 *15.

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.

[redacted]

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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 9 May 2025.

[redacted]

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

| | | |
|---|---|---|
| **UNITED STATES,** *Appellee,* | ) | **REPLY BRIEF ON BEHALF OF APPELLANT** |
| v. | ) | |
| | ) | Before Panel No. 1 |
| Staff Sergeant (E-5) **ANN R. MARIN PEREZ,** United States Air Force, *Appellant.* | ) | No. ACM S32771 |
| | ) | 13 May 2025 |

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

Staff Sergeant (SSgt) Ann R. Marin Perez, Appellant, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply to the United States' Answer to Assignments of Error (Ans.) (May 9, 2025). In addition to the arguments in her opening brief, filed on April 9, 2025, SSgt Marin Perez submits the following additional arguments.

**I.**

**SSgt Marin Perez's guilty plea for larceny was improvident because a substantial conflict was left unresolved on the essential element of the property's legitimate market value.**

1. The Government's decision to charge an inflated value of the property rendered the plea improvident where the military judge failed to reconcile the charged value with the legitimate market value.

For this Court to set aside a guilty plea, there must be a substantial conflict between the plea and the accused's statements or other evidence. *United States v. Hines*, 73 M.J. 119, 124 (C.A.A.F. 2014). In this way, SSgt Marin Perez's case is no different than *United States v. Owens*, No. ARMY 20121071, 2014 CCA LEXIS 344 (A. Ct. Crim. App. May 30, 2014). There, "[t]he military judge failed to address a number of ambiguities between the stipulation of fact and the providence inquiry regarding the amount of money appellant and [her accomplice] conspired to steal in the specification . . . ." *Id*. at *7. That appellant only admitted to wrongfully obtaining

$4,800.00 (and conspiring to commit larceny of over $500.00). *Id*. at *7-9. But the specification charged a specific amount of $5,506.67. *Id*. The Army Court of Criminal Appeals determined this inconsistency and failure to pled to the charged amount in the specification created a "substantial basis in law and fact to questions appellant's plea of guilty to conspiring with [her accomplice] to commit larceny of military property 'of a value of *about* $5,506.67' . . . ." *Id*. at *7 (emphasis added).[1]

Here, the same problem occurred, which leads to the same conclusion: there is a substantial basis in law and fact to question SSgt Marin Perez's plea of guilty to larceny of "about $21,300." The property value charged was "about $21,300." But Defense Exhibit N, a letter from a jewelry appraiser (Mr. DL), contradicted this value substantially. Mr. DL stated that the value of the stolen property (six pieces of jewelry) was much less: at most, half of the value charged. Def. Ex. N. at 1. The military judge never reconciled this ambiguity. Therefore, because a substantial conflict between the plea and other evidence in the record remains, SSgt Marin Perez's guilty plea must be set aside. Article 45(a), 10 U.S.C. § 845(a) (2018).

In citing *Owens* but failing to recognize it supports improvidence of the plea, the Government misses the point regarding the conflicting values. Ans. at 23. SSgt Marin Perez's plea was not provident because the military judge never resolved the value of the property between "about $21,300" and *half* of that value. Only one can be correct for the plea to be provident—the one the Government charged. *See United States v. English*, 79 M.J. 116, 120 (C.A.A.F. 2019) (holding when the Government "narrow[s] the scope of the charged offense" by alleging an elemental fact with more particularity than is required by statute, the conviction may only be

[1] The Army Court of Criminal Appeals' resolution of this issue, however, is erroneous. *See infra* at 6-8. This Court should not affirm on a lower value supported by the record. *Id*.

sustained on the facts alleged). No matter how many times SSgt Marin Perez or her trial defense counsel or Government trial counsel insisted the plea was provident and that the plea should go forward, there remained a substantial conflict on an essential element. *E.g.*, R. at 32, 88; *see, e.g.*, Ans. at 17, 23 (discussing how SSgt Marin Perez and her trial counsel did not have issues with the plea).

The Government makes light of the fact that the specific value is an essential element, stating that "nothing in the text of the offense mandates that the government . . . prove that exact value" charged. Ans. at 15. *Contra United States v. Thompson*, 27 C.M.R. 119, 121 (C.M.A. 1958) (internal citation omitted); *Manual for Courts-Martial*, *United States* (2019 ed.) [hereinafter *MCM*], pt. IV, ¶ 64.c.(1)(g)(i); *Owens*, No. ARMY 20121071, 2014 CCA LEXIS 344, at *7 (finding a basis to question the plea when the exact amount was not proven). This is true if the Government had declined to allege a specific value. But that's not what happened here. Instead, the Government charged a "certain value," the more specific charging scheme under larceny, and selected a value of "about $21,300." *MCM*, pt. IV, ¶ 64.b.(1)(c); Charge Sheet; *see* R. at 21 (showing the military judge advised SSgt Marin Perez that the *element* for the value of the property was about $21,300). In line with *English*, this was the value that had to be proven. 79 M.J. at 120.

The military judge never resolved the conflict between the charged value and the actual value of the stolen property. Instead, the military judge focused on the value being at least over $1,000. R. at 86-88. But whether the property was over $1,000 was not the problem. The problem was that the military judge never reconciled the conflict over the value. And, "because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." *United States v. Care*, 18 C.M.A. 535, 539 (C.M.A. 1969). Here, SSgt Marin Perez was not properly advised

following the conflict between the property's value. As the Government notes, Ans. at 5 n.6, the military judge started to read the definition for value, but stopped mid-sentence. R. at 22. Additionally, as the Government also notes, this was not the only factual misunderstanding the military judge had during the *Care*. Ans. at 7 n.8. There was a suggestion that some of the property stolen was from another person—rather than the individual identified in the charge sheet. R. at 63. The military judge took great pains to reconcile this "conflict" when there were no facts to support that SSgt Marin Perez took or sold anyone's jewelry but her own[2] and the individual's listed in the specification. But the military judge did not take the same care with the value of the property at issue. He never researched the definition of value and he never identified the fact Defense Exhibit N offered a maximum lower value of $10,650 (half of the appraised value). *See* Def. Ex. N at 1 (providing the appraisal doubles the actual value).

The Government discusses at length other methods for calculating the value of stolen property. Ans. at 17-19. But these other methods from the Manual are reserved for when the legitimate market value of the property is unknown or cannot be determined. *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii). There are other problems with the Government's value estimates as well. In one breath, the Government asserts that value is "not a complex legal element," Ans. at 16, 20, but in another, says finding a value is "nuanced," Ans. at 13, spending four pages attempting to argue how the specific value of "about $21,300" could be found despite the conflicting evidence. Ans.

[2] SSgt Marin Perez sold her own jewelry. Pros. Ex. 1, Atch. 4, at 8:08. This is evident because there were more than the six stolen items presented in evidence. Pros. Ex. 1 at 13-17. It is irrelevant she never told law enforcement she also sold her own property when selling the stolen property. *See* Ans. at 4 (insinuating misrepresentations to the contrary). She did not have to. Nor did she have to say so during the *Care*. Her trial defense counsel argued the same inference: "[F]rom . . . all of the receipts from the Trading Post, there's also items on there that were not [the named jewelry owner's]. Staff Sergeant Marin Perez didn't just steal and pawn that, she also was pawning her own things as well." R. at 97. Notably, the Government did not object when this argument was made at trial nor contest this characterization during its sentencing rebuttal.

at 17-21. Conversely, Mr. DL, in three sentences, explained the value of the jewelry was not $21,300 because the appraised value *doubles* the actual value of the jewelry. Def. Ex. N at 1. The Government's "common knowledge" argument is also problematic. After all, "[c]ommon sense, however useful as it is in approaching a variety of legal issues, is not a substitute for the requirement that the record must contain the factual basis for a guilty plea." *United States v. Barton*, 60 M.J. 62, 67 n.3 (C.A.A.F. 2004) (Erdmann, J., dissenting). This, of course, makes sense because Article 45, UCMJ, and *Care* require the appellant to provide a factual basis for the plea and, if a conflict arises, the military judge must reconcile it or reject the plea.

To be sure, the value of the property is not "about $21,300." This is because that value is not the legitimate market value,[3] the replacement value,[4] the retail value,[5] or even a "common knowledge" value.[6] This is especially so when there is *evidence in the record* from an appraiser[7] showing the value was *at most half* of the charged amount. Def. Ex. N at 1. To circumvent this fact, the Government argues that uncharged conduct could have increased the value. Ans. at 21. Not only is there no evidence that the military judge relied on this uncharged conduct to make the plea provident, it would have been error if he had.

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[3] Market value can be established by "proof of the recent purchase price paid for the article in the legitimate market involved or by testimony or other admissible evidence from any person who is familiar through training or experience with the market value in question." *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii). Here, Mr. DL provided the value as, at most, half of $21,300.

[4] Where the value cannot be readily determined, replacement value may be used, but only if it is less than the legitimate market value. *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii).

[5] A "recent purchase price" can demonstrate legitimate market value, meaning the use of a "retail value" receipt still means "legitimate market value." *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii).

[6] The Manual provides that if the property is "obviously of a value substantially in excess of $1,000, the court-martial may find a value of more than $1,000." A finding of more than $1,000 is not the same as a finding of "about $21,300" because of how the Government charged this case.

[7] *See MCM*, pt. IV, ¶ 64.c.(1)(g)(iii) (supporting how Mr. DL would qualify as someone with "training or experience" to provide the legitimate market value).

Ultimately, this is not a simple case like *Barton* where that appellant had to understand he was pleading to a value simply over $100. *Barton*, 60 M.J. at 65. Here, value was explicitly, and wrongly, specified. Because of this, SSgt Marin Perez attempted to plead guilty to something she factually did not do. *E.g.*, *United States v. Pinero*, 60 M.J. 31, 34 (C.A.A.F. 2004); *see United States v. Lewis*, 39 C.M.R. 287, 289 (C.M.A. 1969) (explaining that an accused may not "abandon evidence of a defense in favor of possible advantages derived from a guilty plea."). Factually, the property was not worth $21,300. *MCM*, pt. IV, ¶ 64.c.(1)(g)(iii) (explaining the value of the property is the legitimate market value at the time and place of the theft). And SSgt Marin Perez did not steal $21,300 worth of jewelry; she stole, at most, half that value. Def. Ex. N at 1. The entire record shows there is a conflict as to this value. *Barton*, 60 M.J. at 64. The military judge did not resolve that conflict, and "[an a]ppellant's desire to plead guilty should not obscure the necessity of establishing each element to each offense; speed and economy must cede to care." *Barton*, 60 M.J. at 66. Here, by failing to reconcile the conflict over the value of the property, the plea was improvident.

2. <u>The legitimate market value cannot be swapped in now to affirm the conviction as a "lesser included offense." Rather, a rehearing is required.</u>

When a finding of guilt is made on the charge and specification *as drafted* and an inconsistency between pleadings and proof remains *on appeal*, the only option this Court has is to either reject the findings or affirm a lesser included offense. *United States v. Lubasky*, 68 M.J. 260, 264-65 (C.A.A.F. 2010). While Rule for Courts-Martial (R.C.M.) 918(a)(1) authorizes a finding of guilty by exceptions and substitutions at the *trial level* to correct variance, Article 59(b), UCMJ, 10 U.S.C. § 859(b) (2018), limits this Court's power on *appeal* to only affirming a lesser included offense instead of a finding of guilty.

As an essential element, if the wrong value is charged, the correct value cannot be substituted on appeal to the value proven at the court-martial. At trial, this would have been subject to exceptions and substitutions but, on appeal, this factual discrepancy is subject to a lesser included offense analysis. The Army Court of Criminal Appeals erroneously applies a variance analysis on appeal by "affirming with exception" and "substitut[ing]" the incorrect value with the lesser value proven. *E.g.*, *Owens*, No. ARMY 20121071, 2014 CCA LEXIS 344, at *14-15; *United States v. Wilson*, No. ARMY 20110969, 2013 CCA LEXIS 446, at *5 (A. Ct. Crim. App. May 29, 2013) (citing *United States v. Harding*, 61 M.J. 526, 529-530 (A. Ct. Crim. App. 2005)); *United States v. Sibley*, No. ARMY 20080037, 2008 CCA LEXIS 604 (A. Ct. Crim. App. Aug. 29, 2008) (summ. disp.)).

However, the Army Court of Criminal Appeals' decision to swap out the value for a lesser one comes without analysis, is inconsistent with *English*, and ignores the fact the that the Courts of Criminal Appeals can only affirm lesser included offenses, as detailed in *Lubasky*. *Lubasky*, 68 M.J. at 265 (citing Article 59(b), UCMJ). In *Lubasky*, the Court of Appeals for the Armed Forces (CAAF) held "there is no authority for the proposition that larceny from one entity is [a lesser included offense] of larceny from another entity." *Id*. at 265 (citing *United States v. Medina*, 66 M.J. 21, 25 (C.A.A.F. 2008)) ("'One offense is not "necessarily included" in another unless the elements of the lesser included offense are a subset of the elements of the charged offense.'" (quoting *United States v. Schmuck*, 489 U.S. 705, 716 (1989))).

Here, there is no lesser included offense for this Court to affirm—as there was not in the Army cases either. Larceny is the same crime regardless of the value alleged. The "lesser offense" of a lower valued larceny is not a subset of the *same larceny* charged incorrectly. *See Medina*, 66 M.J. at 25 (citing *Schmuck*, 489 U.S. at 716) (reciting the "elements test" for lesser included

offenses which requires the "lesser offense" have elements that are a subset of the "greater offense"). The elements for the stolen jewelry are the same—the charged value is simply wrong. Swapping out the value is not affirming a lesser included offense, especially where SSgt Marin Perez did not knowingly plead to the crime charged or the correct property value—which remains unclear to date. Consequently, as in *Lubasky*, when the wrong value of the property is not proven and is contradicted in the plea, the charged larceny is not provident. Therefore, this Court should authorize a rehearing.

**WHEREFORE**, SSgt Marin Perez requests that this Court set aside the finding of guilty as to the Charge and Specification and set aside the sentence.

## II.

### SSgt Marin Perez is entitled to relief because the military judge misapprehended the value of the larceny for which he sentenced her.

Assuming SSgt Marin Perez's plea was provident, the military judge still sentenced her to a grossly inflated value of the property. This misunderstanding of the nature and seriousness of the offense is constitutional in nature, meaning the Government has the burden to prove harmlessness beyond a reasonable doubt. *United States v. Tovarchavez*, 78 M.J. 458, 460 (C.A.A.F. 2019) (citing *United States v. Jones*, 78 M.J. 37, 45 (C.A.A.F. 2018)). The Government failed to address—or meaningfully contest—this burden and repeatedly put the onus on SSgt Marin Perez to prove the sentence would have been different but for the military judge's belief the property was of a much higher value. Ans. at 25-27. This burden shift conceals the Government's true position: it failed to prove beyond a reasonable doubt that the error "did not taint the proceedings or otherwise contribute to [SSgt Marin Perez's] conviction or sentence." *Tovarchavez*, 78 M.J. at 460 (quoting *United States v. Williams*, 77 M.J. 459, 464 (C.A.A.F. 2018)). Where any reduction in rank, any confinement over thirty days, and any punitive discharge were all choices to be made

by the military judge, the Government failed to carry its burden of harmlessness beyond a reasonable doubt that the erroneous value of the property did not contribute to any part of the sentence adjudged in this case.

Additionally, should this Court affirm a "lesser included offense," the sentence should still be set aside. The Government asks for affirmance on the "lesser included offense of larceny of non-military property with a value of $1,000 or *less*." Ans. at 24 (emphasis added). If this Court does affirm SSgt Marin Perez's conviction under this theory, the sentence must still be set aside. This is for all the reasons stated in the original brief, specifically, that the value of the property was not the value charged (or pled to) and the higher value was inherently aggravating. Br. on Behalf of Appellant at 12-15. Should the conviction be affirmed on this much lower property value, SSgt Marin Perez requests a sentence rehearing. But should this Court reevaluate the sentence itself instead, SSgt Marin Perez requests this Court reassess the sentence to one that does not include a bad-conduct discharge.

**WHEREFORE**, SSgt Marin Perez requests that this Court set aside the sentence.

Respectfully submitted,

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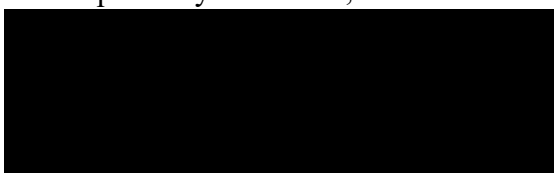
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 13 May 2025.

Respectfully submitted,



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