

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

| | | |
|----------------------|---|----------------|
| UNITED STATES |) | No. ACM 40698 |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Antwan I. MOORE, Jr. |) | |
| Senior Airman (E-4) |) | |
| U.S. Air Force |) | |
| <i>Appellant</i> |) | Panel 2 |

On 9 December 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

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

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

ORDERED:

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

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits.

Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to the matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal.

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 330 days after docketing, will not be granted absent exceptional circumstances.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

v.

Senior Airman (E-4)

ANTWAN I. MOORE, JR.,

United States Air Force,

Appellant.

) **APPELLANT’S MOTION**

) **FOR ENLARGEMENT**

) **OF TIME (FIRST)**

)

) Before Panel No. 2

)

) No. ACM 40698

)

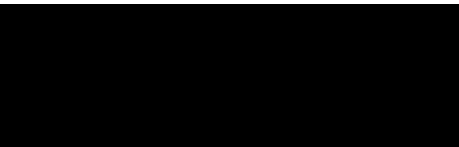
) 9 December 2024

**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 Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **18 February 2025**. The record of trial was docketed with this Court on 21 October 2024. From the date of docketing to the present date, 49 days have elapsed. On the date requested, 120 days will have elapsed.

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

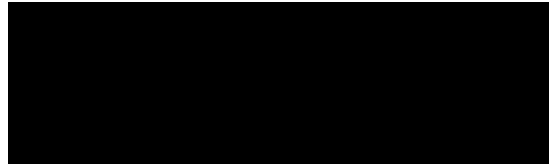
Respectfully submitted,



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

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 9 December 2024.



SAMANTHA M. CASTANIEN, Capt, USAF
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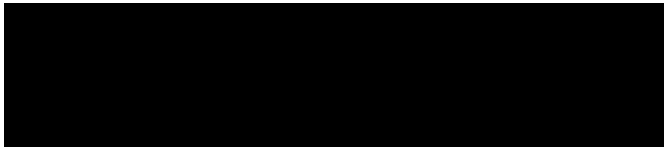
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|----------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| |) | OF TIME |
| v. |) | |
| |) | |
| Senior Airman (E-4) |) | ACM 40698 |
| ANTWAN I. MOORE JR., USAF, |) | |
| <i>Appellant.</i> |) | Panel No.2 |
| |) | |

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

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

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



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 10 December 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee,

V.

Senior Airman (E-4)

ANTWAN I. MOORE, JR.,

United States Air Force,

Appellant.

) APPELLANT'S MOTION

) **FOR ENLARGEMENT**

) OF TIME (SECOND)

)

) Before Panel No. 2

)

) No. ACM 40698

)

) 3 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 (4) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **20 March 2025**. The record of trial was docketed with this Court on 21 October 2024. From the date of docketing to the present date, 105 days have elapsed. On the date requested, 150 days will have elapsed.

On 12 June 2024, at a general court-martial convened at Yokota Air Base, Japan, a military judge, consistent with Appellant's pleas, found him guilty of one specification of possession of child pornography and one specification of wire fraud, in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of indecent recording, in violation of Article 120c, UCMJ.¹ R. at 1, 17, 24-25, 146. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 30 months (confinement for each specification running concurrently), and to be discharged with a bad conduct discharge. R. at 239. The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – *United States v. Senior Airman Antwas I. Moore, Jr.*

¹ Two additional specifications of Article 120c, UCMJ, were withdrawn and dismissed with prejudice. R. at 241.

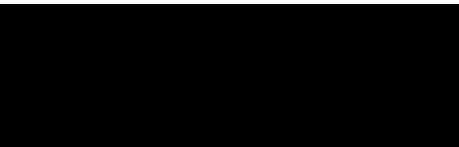
The trial transcript is 241 pages long and the record of trial (ROT) is an electronic ROT, which is one volume of 752 pages. There are eight Prosecution Exhibits, six Defense Exhibits, four Appellate Exhibits, and one Court Exhibit. Appellant is currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of undersigned counsel's progress on his 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 he 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 him regarding potential errors.

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

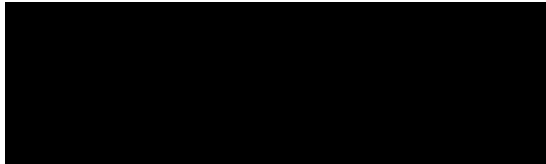
Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 3 February 2025.



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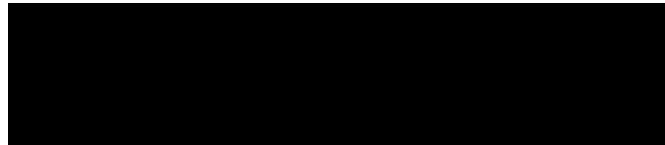
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|----------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| |) | OF TIME |
| v. |) | |
| |) | |
| Senior Airman (E-4) |) | ACM 40698 |
| ANTWAN I. MOORE JR., USAF, |) | |
| <i>Appellant.</i> |) | Panel No.2 |
| |) | |

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

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

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



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
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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 5 February 2025.



JENNY A. LIABENOW, Lt Col, USAF
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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,

V.

Senior Airman (E-4)

ANTWAN I. MOORE, JR.,

United States Air Force,

Appellant.

) CONSENT MOTION TO EXAMINE

) SEALED MATERIALS

)

) Before Panel No. 2

)

) No. ACM 40698

)

)

) 5 March 2025

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1, 23.1(b) and 23.3(f)(1) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine sealed Prosecution Exhibits 2, 3, and 4, Preliminary Hearing Officer (PHO) Exhibits 8-12. Additionally, Counsel seeks to review the Court's Record of Trial (ROT) for inclusion of PHO Exhibits 13-16, which the PHO indicates were not attached to the report, but if they were included in the ROT by the legal office would reasonably have been treated as sealed.

Facts

On 12 June 2024, at a general court-martial convened at Yokota Air Base, Japan, a military judge, consistent with Appellant's pleas, found him guilty of one specification of possession of child pornography and one specification of wire fraud, in violation of Article 134, Uniform Code of Military Justice (UCMJ), and one specification of indecent recording, in violation of Article 120c, UCMJ. R. at 1, 17, 24-25, 146. The military judge sentenced Appellant to be reprimanded, to be reduced to the grade of E-1, to be confined for a total of 30 months (confinement for each specification running concurrently), and to be discharged with a bad conduct discharge. R. at 239.

The convening authority took no action on the findings or sentence. Convening Authority Decision on Action – *United States v. Senior Airman Antwan I. Moore, Jr.* Pursuant to a plea deal in the case, two additional charges of indecent recording with different named victims were dismissed. Appellate Exhibit II, pg. 1.R. at 241.

During the court-martial, the military judge received and sealed the following exhibits, which appear to contain the contraband and explicit images that form the foundation of the charges which the Appellant plead guilty to, which are followed by descriptions of what those exhibits appear to consist of:

1. Prosecution Exhibit 2: eight nude images of a named victim, undated (1 disk);
2. Prosecution Exhibit 3: three videos of two additional named victims, undated (2 disks);
3. Prosecution Exhibit 4: 18 videos and 12 photos of explicit materials. Exhibit Index; R. at 240.

The incorporation and admissibility exhibits was stipulated to by both Government Counsel, Defense Counsel, and the Appellant. Prosecution Exhibit 1, pg. 8.

During the preliminary hearing, the Preliminary Hearing Officer (PHO) sealed and attached the following exhibits, which are followed by descriptions of what those exhibits appear to consist of:

1. PHO Exhibit 8: video interview of a named victim, dated 25 Sep 23;
2. PHO Exhibit 9: alleged indecent video recording of named victim;
3. PHO Exhibit 10: video Interview of a named victim, dated 6 Sep 23;
4. PHO Exhibit 11: video Interview of a named victim, dated 27 Sep 23;
5. PHO Exhibit 12: alleged indecent recording of a named victim. DD Form 457, continuation pages, pg. 1.

Additionally, the PHO lists several exhibits that he considered but which are “not attached to the report.” If included, these items likely would have been sealed due to the alleged contraband nature of the items:

1. PHO Exhibit 13: 6 digital files with alleged contraband;
2. PHO Exhibit 14: 9 digital files with alleged contraband;
3. PHO Exhibit 15: 3 unsanitized DC3 Reports (a sanitized version of the report was attached to the PHO Report);
4. PHO Exhibit 16: 16 digital files with alleged contraband. DD Form 457, continuation pages, pg. 1.

These items were considered by the PHO, but were not included in Appellate Defense Counsel’s copy of the ROT.

Law

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

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

conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance.” Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1, Rule 1.3(11 Dec. 18); AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

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

Analysis

Sealed Prosecution Exhibits 2-4 and PHO exhibits 8-16 identified in the fact section above appear to be the explicit images and video which form the foundation for the allegations referred against Appellant, as well as victim interviews regarding the same. The PHO exhibits were provided to or reviewed by the parties in advance of the Article 32, UCMJ hearing, and PHO Exhibits 8-12 were sealed as part of the Article 32 report. The admissibility and use of Prosecution Exhibits 2-4 was stipulated to by both Government and Defense Counsel in advance of the court-martial. Thus, it is evident the parties “presented” and “reviewed” the sealed material.

PHO Exhibits 13-16 do not appear in counsel’s ROT, and may or may not be included in this Honorable Court’s ROT. However, the PHO report is clear that they were considered by the PHO, although not explicitly attached to the report. Additionally, the contraband nature of these

exhibits makes it likely that if they were included in any ROT, they may have been treated as sealed, even if not designated as such. The attachments to the PHO report do not appear to include filler pages for either the known sealed or known “unattached” exhibits, making it difficult to accurately determine what was included in the final ROT submitted to this Honorable Court, and therefore what exactly is available for Counsel’s review (at least in regards to PHO exhibits 13-16). While PHO Exhibits 13-16 are not explicitly sealed by the PHO, their contraband nature would reasonably explain their exclusion from Appellant Counsel’s ROT, and the PHO’s consideration of these exhibits may have led to their inclusion in the Court’s ROT despite not being explicitly attached to the PHO report, and thus they are included in this motion. It is reasonably necessary for Appellant’s counsel to review the Court’s ROT to determine whether the legal office included these items in the Court’s ROT, and if so, to review them as part of Appellant’s counsel’s review of the case to determine what, if any, relief the Appellant may be entitled to based upon the potential content (or exclusion from the ROT) of these documents.

It is reasonably necessary for Appellant’s counsel to review these sealed and alleged contraband exhibits and for counsel to competently conduct a professional evaluation of Appellant’s case and to uncover all issues which might afford him relief. To do so, a review of the sealed and alleged contraband records introduced and considered during the Article 32, UCMJ, hearing and admitted at trial as Prosecution Exhibits is necessary to evaluate whether there was any information Defense counsel should have considered when evaluating the benefit of entering into the plea agreement, as well as what legal risks the Appellant may face if his guilty plea is overturned for any reason.

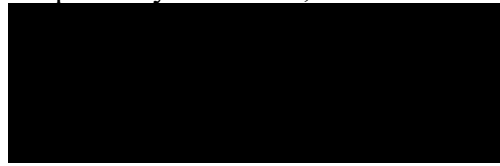
Because examination of the materials in question is reasonably necessary to the fulfillment of counsel’s Article 70, UCMJ duties, and because the materials were made available to the parties

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

The Government consents to both parties viewing the sealed materials detailed above.

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

Respectfully submitted,

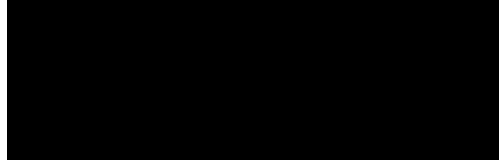


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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 5 March 2025.

Respectfully submitted,



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

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|----------------------------|---|----------------------|
| UNITED STATES |) | No. ACM 40698 |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Antwan I. MOORE |) | |
| Senior Airman (E-4) |) | |
| U.S. Air Force |) | |
| <i>Appellant</i> |) | Panel 2 |

On 5 March 2025, Appellant’s counsel submitted a Consent Motion to Examine Sealed Materials, requesting counsel for both parties be allowed to examine certain portions of the record of trial ordered sealed, specifically:

- (1) Prosecution Exhibits 2, 3, and 4;
- (2) Preliminary Hearing Officer (PHO) Exhibits 8–12; and
- (3) PHO Exhibits 13–16 which the PHO indicates were not attached to the report, but if they were included in the ROT by the legal office would reasonably have been treated as sealed.

Appellant’s counsel avers the requested materials were presented or reviewed by the parties in advance of the pretrial hearing or trial, and that the Government consents to this motion.

Appellant’s counsel asserts

a review of the sealed and alleged contraband records introduced and considered during the Article 32, UCMJ, hearing and admitted at trial as Prosecution Exhibits is necessary to evaluate whether there was any information Defense counsel should have considered when evaluating the benefit of entering into the plea agreement, as well as what legal risks the Appellant may face if his guilty plea is overturned for any reason.

The preliminary hearing report in the court’s copy of the record of trial does not contain PHO Exhibits 13–16.

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

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

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

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Prosecution Exhibits 2, 3, and 4, and PHO Exhibits 8–12** subject to the following conditions:

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

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



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

UNITED STATES,
Appellee,

v.

Senior Airman (E-4)
ANTWAN I. MOORE, JR.,
United States Air Force,
Appellant.

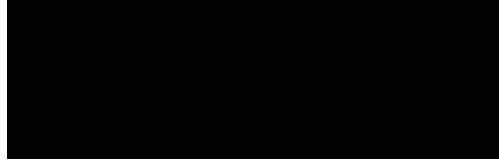
) **MOTION TO WITHDRAW**
) **FROM APPELLATE REVIEW AND**
) **ATTACH**
)
) Before Panel No. 2
)
) No. ACM 40698
)
) 19 March 2025

Pursuant to Rule 16 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals and Rule for Courts-Martial (R.C.M.) 1115, Appellant moves to withdraw his case from appellate review. Appellant has fully consulted with Major Rebecca Saathoff, his appellate defense counsel, regarding this motion to withdraw. No person has compelled, coerced, or induced Appellant by force, promises of clemency, or otherwise, to withdraw his case from appellate review.

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

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

Respectfully submitted,

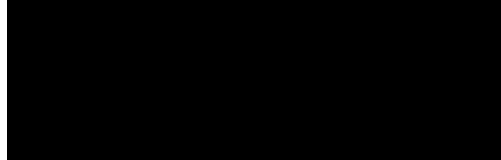


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Respectfully submitted,



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