

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

| | | |
|----------------------|---|---------------|
| UNITED STATES |) | No. ACM 40619 |
| Appellee |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Nicholas C. TOMPKINS |) | |
| Staff Sergeant (E-5) |) | |
| U.S. Air Force |) | |
| Appellant |) | Panel 2 |

On 2 August 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 7th day of August, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **9 October 2024**.

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 360 days after docketing, will not be granted absent exceptional circumstances.



FOR THE COURT



OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

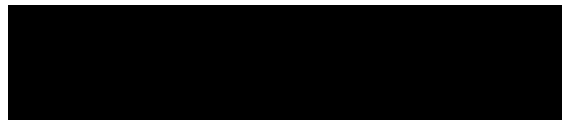
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|------------------------------|---|------------------------|
| UNITED STATES, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (FIRST) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 2 August 2024 |

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for the first enlargement of time to file his assignments of error. SSgt Tompkins requests an enlargement for a period of 60 days, which will end on **9 October 2024**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 52 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

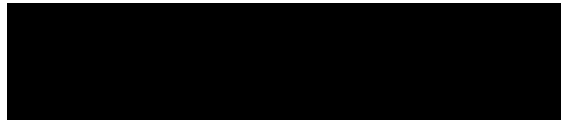


SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 2 August 2024.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
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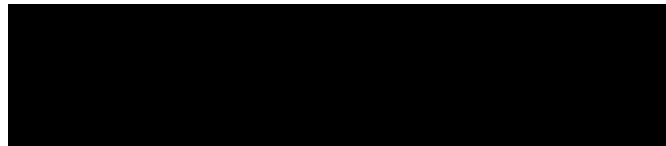
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| v. |) | OF TIME |
| |) | |
| Staff Sergeant (E-5) |) | ACM 40619 |
| NICHOLAS C. TOMPKIINS, USAF, |) | |
| <i>Appellant.</i> |) | Panel No. 2 |

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

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

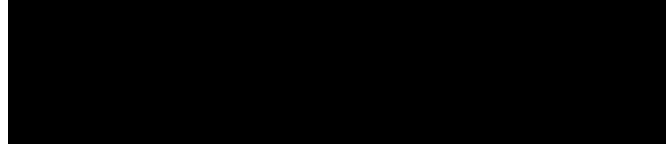
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 6 August 2024.



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Government Trial and Appellate Operations Division
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**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

| | | |
|----------------------|---|----------------|
| UNITED STATES |) | No. ACM 40619 |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Nicholas C. TOMPKINS |) | |
| Staff Sergeant (E-5) |) | |
| U.S. Air Force |) | |
| <i>Appellant</i> |) | Panel 2 |

On 25 September 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Second) requesting “an enlargement for a period of 60 days, which will end on **8 November 2024**” to submit Appellant’s assignments of error. The Government opposes the motion.

The request for an additional 60 days, vice 30 days, appears to be in error. On 7 August 2024, we granted Appellant’s request for an enlargement of time for 60 days, to end 9 October 2024.

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

Accordingly, it is by the court on this 30th day of September, 2024,

ORDERED:

Appellant’s Motion for Enlargement of Time (Second) is **GRANTED IN PART**. Appellant shall file any assignments of error not later than **8 November 2024**.



FOR THE COURT



CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|-------------------------------|
| UNITED STATES, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (SECOND) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 25 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 (4) of this Honorable Court’s Rules of Practice and Procedure, Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for a second enlargement of time to file his assignments of error. SSgt Tompkins requests an enlargement for a period of 60 days, which will end on **8 November 2024**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 106 days have elapsed. On the date requested, 150 days will have elapsed.

On 8 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. R. at 87; Charge Sheet. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for 36 months, and a dishonorable discharge. R. at 159. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id.* The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Tompkins’ release from confinement, or expiration of term of service, for the benefit of SSgt Tompkins’ dependents. *Id.*

The convening authority denied SSgt Tompkins' request to defer the reduction in grade until the Entry of Judgment. *Id.*

The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. SSgt Tompkins is confined.

Through no fault of SSgt Tompkins, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SSgt Tompkins was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

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

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 25 September 2024.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
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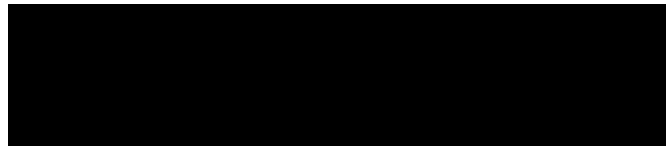
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| v. |) | OF TIME |
| |) | |
| Staff Sergeant (E-5) |) | ACM 40619 |
| NICHOLAS C. TOMPKINS, 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.

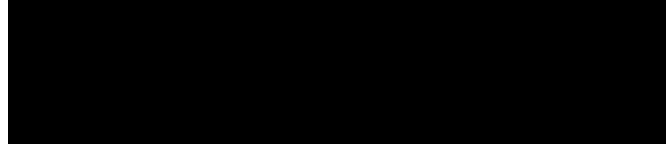
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
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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 30 September 2024.



JENNY A. LIABENOW, Lt Col, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|-------------------------------|
| UNITED STATES, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (THIRD) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 29 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 (4) of this Honorable Court’s Rules of Practice and Procedure, Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for a third enlargement of time to file his assignments of error. SSgt Tompkins requests an enlargement for a period of 30 days, which will end on **8 December 2024**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 8 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. R. at 87; Charge Sheet. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for 36 months, and a dishonorable discharge. R. at 159. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id.* The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Tompkins’ release from confinement, or expiration of term of service, for the benefit of SSgt Tompkins’ dependents. *Id.*

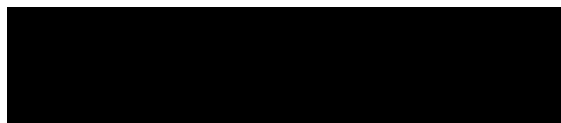
The convening authority denied SSgt Tompkins' request to defer the reduction in grade until the Entry of Judgment. *Id.*

The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. SSgt Tompkins is confined.

Through no fault of SSgt Tompkins, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SSgt Tompkins was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

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

Respectfully submitted,

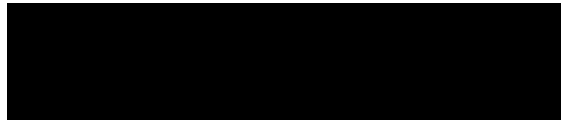


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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 29 October 2024.

Respectfully submitted,



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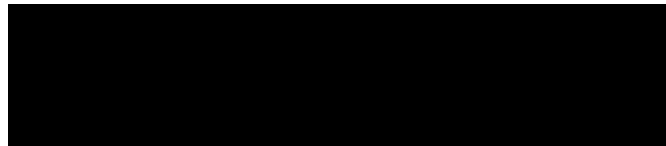
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|-----------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| v. |) | OF TIME |
| |) | |
| Staff Sergeant (E-5) |) | ACM 40619 |
| NICHOLAS C. TOMPKINS, 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.

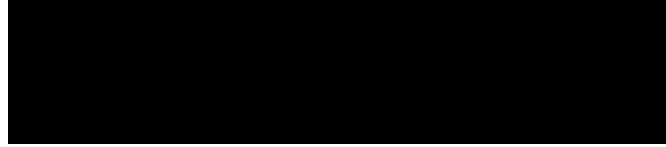
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 31 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

| | | |
|------------------------------|---|-------------------------------|
| UNITED STATES, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (FOURTH) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 27 November 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, Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for a fourth enlargement of time to file his assignments of error. SSgt Tompkins requests an enlargement for a period of 30 days, which will end on **7 January 2025**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 169 days have elapsed. On the date requested, 210 days will have elapsed.

On 8 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. R. at 87; Charge Sheet. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for 36 months, and a dishonorable discharge. R. at 159. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id.* The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Tompkins’ release from confinement, or expiration of term of service, for the benefit of SSgt Tompkins’ dependents. *Id.*

The convening authority denied SSgt Tompkins' request to defer the reduction in grade until the Entry of Judgment. *Id.*

The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. SSgt Tompkins is confined.

Through no fault of SSgt Tompkins, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SSgt Tompkins was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

Undersigned counsel's workload includes representing 25 clients. 12 cases are currently pending initial brief before this Court. Nine cases currently have priority over the present case:

1. *United States v. George, Jr.*, USCA Dkt. No. 24-0206/AF – The appellant's reply brief for a granted issue was filed at the Court of Appeals for the Armed Forces (CAAF) on Monday, 25 November 2024. Currently, undersigned counsel is dedicating her time to preparing for oral argument which is scheduled to occur on 10 December 2024.
2. *United States v. Casillas*, No. ACM 40551 – The record of trial includes 19 prosecution exhibits, 4 defense exhibits, 65 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 14 December 2023.
3. *United States v. Dawson*, No. ACM 24041 – The record of trial includes 13 prosecution exhibits, 9 defense exhibits, 1 court exhibit, 41 appellate exhibits, and 761 transcript

- pages. The appellant is not confined. Undersigned counsel has prioritized this case above others because it was docketed on 4 October 2023. This Court and undersigned counsel received the verbatim transcript on 9 August 2024.
4. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined, and his case was docketed on 26 January 2024.
 5. *United States v. Blair*, No. ACM S32778 – The record of trial includes 7 prosecution exhibits, 22 defense exhibits, 6 appellate exhibits, and 187 transcript pages. The appellant is not confined, and his case was docketed on 22 April 2024.
 6. *United States v. Roberts*, No. ACM 40608 – The 11-volume record of trial includes 30 prosecution exhibits, 3 defense exhibits, 1 court exhibit, 102 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 7 May 2024.
 7. *United States v. Robinson*, No. ACM 24044 – The 10-volume record of trial includes 23 prosecution exhibits, 8 defense exhibits, 58 appellate exhibits, and 1,112 transcript pages. The appellant is not confined, and his case was docketed on 30 May 2024.
 8. *United States v. Lovell*, No. ACM 40614 – The record of trial includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. The appellant is not confined, and his case was docketed on 31 May 2024.
 9. *United States v. Shirley*, No. ACM 40618 – The record of trial includes 3 prosecution exhibits, 2 defense exhibits, 8 appellate exhibits, and 153 transcript pages. The appellant is confined, and his case was docketed on 5 June 2024.

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

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 27 November 2024.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
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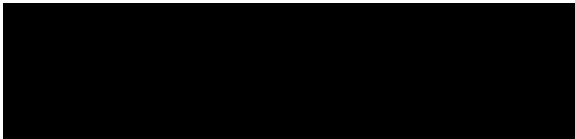
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|-----------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| v. |) | OF TIME |
| |) | |
| Staff Sergeant (E-5) |) | ACM 40619 |
| NICHOLAS C. TOMPKINS, USAF, |) | |
| <i>Appellant.</i> |) | Panel No. 2 |

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

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

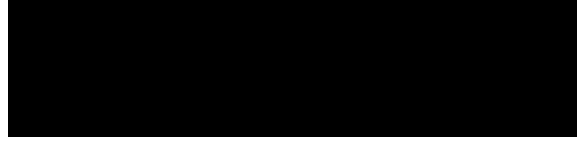
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 3 December 2024.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|-------------------------------|
| UNITED STATES, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (FIFTH) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 27 December 2024 |

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

Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for a fifth enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). SSgt Tompkins requests an enlargement for a period of 30 days, which will end on **6 February 2025**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 8 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. R. at 87; Charge Sheet. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for 36 months, and a dishonorable discharge. R. at 159. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id.* The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Tompkins’ release from confinement, or expiration of term of service, for the benefit of SSgt Tompkins’ dependents. *Id.*

The convening authority denied SSgt Tompkins' request to defer the reduction in grade until the Entry of Judgment. *Id.*

The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. SSgt Tompkins is confined.

Through no fault of SSgt Tompkins, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SSgt Tompkins was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

Undersigned counsel's workload includes representing 24 clients. Of these 24 clients, 4 clients have been recently detailed to other military appellate defense counsel and are pending, or will soon be pending, a motion for undersigned counsel to withdrawal as appellate defense counsel. Undersigned counsel continues to be the sole counsel on eight cases that are currently pending initial brief before this Court. Five cases currently have priority over the present case:

1. *United States v. Casillas*, No. ACM 40551 – The 10-volume record of trial includes 19 prosecution exhibits, 4 defense exhibits, 65 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 14 December 2023. Undersigned counsel will soon complete her review of the record and needs to continue researching and drafting the appellant's assignments of error. The appellant's assignments of error will be filed no later than 7 January 2025.

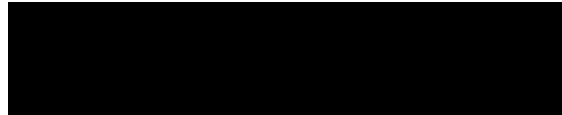
2. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined, and his case was docketed on 26 January 2024.
3. *United States v. Roberts*, No. ACM 40608 – The 11-volume record of trial includes 30 prosecution exhibits, 3 defense exhibits, 1 court exhibit, 102 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 7 May 2024.
4. *United States v. Robinson*, No. ACM 24044 – The 10-volume record of trial includes 23 prosecution exhibits, 8 defense exhibits, 58 appellate exhibits, and 1,112 transcript pages. The appellant is not confined, and his case was docketed on 30 May 2024.
5. *United States v. Lovell*, No. ACM 40614 – The record of trial includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. The appellant is not confined, and his case was docketed on 31 May 2024.

Since requesting SSgt Tompkins' fourth enlargement of time on 27 November 2024, undersigned counsel prepared for and completed oral argument on 10 December 2024 in *United States v. George, Jr.*, USCA Dkt. No. 24-0206/AF. In *United States v. Casillas*, No. ACM 40551, she has been reviewing a 10-volume record and researching the issues found. Since requesting SSgt Tompkins' fourth enlargement of time and during the remainder of the fourth enlargement of time, the Court and undersigned counsel's office have been, or will be, closed on 7 days: 28-29 November 2024, 24-26 December 2024, and 1-2 January 2025. Further, during the fifth requested enlargement of time, undersigned counsel has been authorized leave outside the local

area from 16-21 January 2025 (which overlaps with two days when this Court and undersigned counsel's office are anticipated to be closed: 17 January 2025 and 20 January 2025).

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

Respectfully submitted,

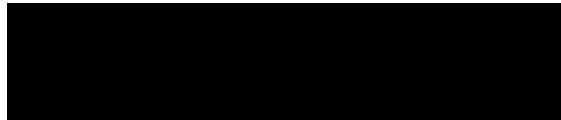


SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Office: (240) 612-4770
Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 27 December 2024.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
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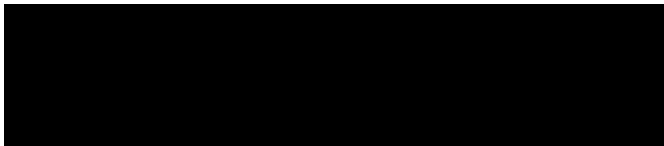
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|-----------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| v. |) | OF TIME |
| |) | |
| Staff Sergeant (E-5) |) | ACM 40619 |
| NICHOLAS C. TOMPKINS, 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.

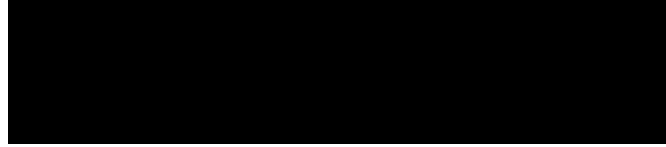
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 30 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, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (SIXTH) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 27 January 2025 |

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

Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for a sixth enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). SSgt Tompkins requests an enlargement for a period of 30 days, which will end on **8 March 2025**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 8 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. R. at 87; Charge Sheet. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for 36 months, and a dishonorable discharge. R. at 159. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id.* The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Tompkins’ release from confinement, or expiration of term of service, for the benefit of SSgt Tompkins’ dependents. *Id.*

The convening authority denied SSgt Tompkins' request to defer the reduction in grade until the Entry of Judgment. *Id.*

The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. SSgt Tompkins is confined.

Through no fault of SSgt Tompkins, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SSgt Tompkins was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

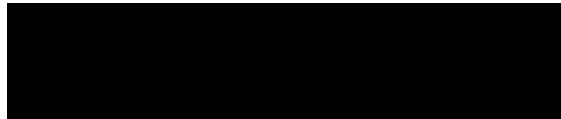
Undersigned counsel's workload includes representing 19 clients. Undersigned counsel continues to be the sole counsel on seven cases that are currently pending initial brief before this Court. Four cases currently have priority over the present case:

1. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The appellant is not confined, and his case was docketed on 26 January 2024.
2. *United States v. Roberts*, No. ACM 40608 – The 11-volume record of trial includes 30 prosecution exhibits, 3 defense exhibits, 1 court exhibit, 102 appellate exhibits, and 1,627 transcript pages. The appellant is confined, and his case was docketed on 7 May 2024.

3. *United States v. Robinson*, No. ACM 24044 – The 10-volume record of trial includes 23 prosecution exhibits, 8 defense exhibits, 58 appellate exhibits, and 1,112 transcript pages. The appellant is not confined, and his case was docketed on 30 May 2024.
4. *United States v. Lovell*, No. ACM 40614 – The record of trial includes 4 prosecution exhibits, 5 appellate exhibits, and 85 pages of transcript. The appellant is not confined, and his case was docketed on 31 May 2024.

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

Respectfully submitted,

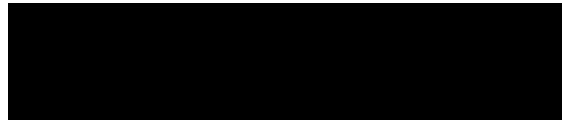


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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 27 January 2025.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
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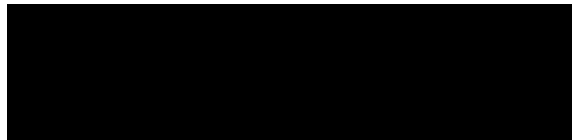
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|-----------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' GENERAL |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT'S |
| |) | MOTION FOR ENLARGEMENT |
| v. |) | OF TIME |
| |) | |
| Staff Sergeant (E-5) |) | ACM 40619 |
| NICHOLAS C. TOMPKINS, USAF, |) | |
| <i>Appellant.</i> |) | Panel No. 2 |

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

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

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



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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force
Appellate Defense Division on 29 January 2025.



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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|-------------------------------|
| UNITED STATES, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (SEVENTH) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 27 February 2025 |

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

Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for a seventh enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). SSgt Tompkins requests an enlargement for a period of 30 days, which will end on **7 April 2025**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 261 days have elapsed. On the date requested, 300 days will have elapsed.

On 8 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. R. at 87; Charge Sheet. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for 36 months, and a dishonorable discharge. R. at 159. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id.* The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Tompkins’ release from confinement, or expiration of term of service, for the benefit of SSgt Tompkins’ dependents. *Id.*

The convening authority denied SSgt Tompkins' request to defer the reduction in grade until the Entry of Judgment. *Id.*

The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. SSgt Tompkins is confined.

Through no fault of SSgt Tompkins, undersigned counsel has been working on other assigned matters and has yet to complete her review of his case. This enlargement of time is necessary to allow undersigned counsel to fully review his case and advise him regarding potential errors. SSgt Tompkins was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

Undersigned counsel's workload includes representing 18 clients.¹ Undersigned counsel continues to be the sole counsel on four cases that are currently pending initial brief before this Court. One case currently has priority over the present case²:

1. *United States v. Hagen*, No. ACM 40561 – The record of trial includes 8 prosecution exhibits, 8 defense exhibits, 48 appellate exhibits, and 817 transcript pages. In total, the electronic record of trial is 1,786 pages and contains multiple media files. The

¹ Undersigned counsel has filed a motion to withdraw as appellate defense counsel in *United States v. Lovell*, No. ACM 40614, and *United States v. Mabida*, No. ACM 40682.

² Mr. Dwight Sullivan is now lead counsel for *United States v. Roberts*, No. ACM 40608. Undersigned counsel has reprioritized SSgt Tompkins' case over *United States v. Robinson*, No. ACM 24044, given the clarity for brief filing deadlines from Rule 18(d)(2) of the Joint Rules of Appellate Procedure, and the smaller size of the record of trial in SSgt Tompkins' case.

appellant is not confined, and his case was docketed on 26 January 2024. The appellant's brief will be filed with this Court on 7 March 2025.

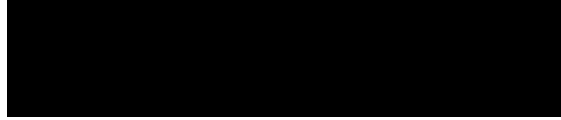
In addition to the above priority, undersigned counsel anticipates:

- On 3 March 2025, she will participate in a moot argument as a moot judge;
- On 5 March 2025, she will attend oral argument in *United States v. Jenkins*, No. ACM S32765;
- From 3 March – 10 March 2025, she will be reviewing and responding to the Government's answer brief in *United States v. Casillas*, No. ACM 40551 (involving twelve issues);
- She will then turn her attention to filing a supplemental brief before the U.S. Court of Appeals in *In re Alton*, Misc. Dkt. No. 2024-12, by or before 17 March 2025; and *United States v. Benoit*, ACM No. 40508, by or before 21 March 2025.
- She will draft and file by 21 March 2025, at the appellant's personal request, a motion for reconsideration in *United States v. Daniels*, ACM No. 39407 (rem).
- She will participate as a moot judge in advance of argument and attend argument on 19 March 2025, for *United States v. Taylor*, USCA Dkt. No. 24-0234/AF.
- Lastly, she will be on leave overseas from 24 March – 3 April 2025.

Considering all of the above priorities, undersigned counsel endeavors to begin focusing on SSgt Tompkins' record of trial around 17 March 2025.

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

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 27 February 2025.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Samantha P. Golseth.

SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES' OPPOSITION |
| <i>Appellee,</i> |) | TO APPELLANT'S MOTION |
| |) | FOR ENLARGEMENT OF TIME |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force |) | |
| <i>Appellant.</i> |) | 28 February 2025 |

**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 (Seventh) to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

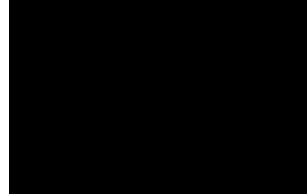
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

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 February 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|-------------------------------|
| UNITED STATES, |) | APPELLANT’S MOTION FOR |
| <i>Appellee,</i> |) | ENLARGEMENT OF TIME |
| |) | (EIGHTH) |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 22 March 2025 |

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

Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves for an eighth enlargement of time to file his assignments of error. A.F. CT. CRIM. APP. R. 23.3(m)(3) and 23.3(m)(6). SSgt Tompkins requests an enlargement for a period of 30 days, which will end on **7 May 2025**. The record of trial was docketed with this Court on 11 June 2024. From the date of docketing to the present date, 284 days have elapsed. On the date requested, 330 days will have elapsed. Undersigned counsel anticipates this will be last enlargement of time requested.

On 8 January 2024, a general court-martial composed of a military judge sitting alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. R. at 87; Charge Sheet. The military judge sentenced him to a reprimand, reduction to the grade of E-1, confinement for 36 months, and a dishonorable discharge. R. at 159. The convening authority took no action on the findings. Convening Authority Decision on Action. The convening authority suspended the reduction in rank for six months, with the suspended reduction in rank to be remitted at six months unless sooner vacated. *Id.* The convening authority also waived all automatic forfeitures for a period of six months, or until SSgt Tompkins’ release from confinement, or expiration of term of service, for the benefit of SSgt Tompkins’ dependents. *Id.*

The convening authority denied SSgt Tompkins' request to defer the reduction in grade until the Entry of Judgment. *Id.*

The record of trial is 849 pages in total and includes 3 prosecution exhibits, 12 defense exhibits, 5 appellate exhibits, 1 court exhibit, and 160 pages of transcript. SSgt Tompkins is confined.

Through no fault of SSgt Tompkins, undersigned counsel has been working on other assigned matters and has not completed her review of his case. This enlargement of time is necessary to allow undersigned counsel to complete her review and advise SSgt Tompkins regarding potential errors. SSgt Tompkins was (1) advised of his right to a timely appeal, (2) updated on the status of undersigned counsel's progress on his case, and (3) advised of undersigned counsel's request for an enlargement of time. He asserts his right to a timely appeal, but recognizing undersigned counsel's workload, he (4) agrees with the request for an enlargement of time.

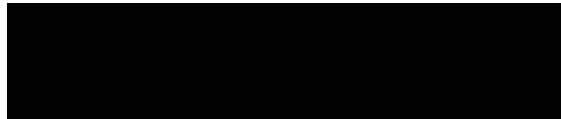
Undersigned counsel's workload includes representing 16 clients. SSgt Tompkins's case is now undersigned counsel's first priority. Undersigned counsel will, however, be on leave and not available to work on SSgt Tompkins's case on 23 March 2025 through 3 April 2025. SSgt Tompkins is aware of undersigned counsel's leave plans, that she will not be reviewing his case while on leave, and that undersigned counsel will be attending to his case when she returns from leave.

Since undersigned counsel filed SSgt Tompkins's request for a seventh enlargement of time, she accomplished the following matters: (1) Brief on Behalf of the Appellant in *United States v. Hagen*, No. ACM 40561, addressing fourteen issues; (2) Reply Brief in *United States v. Casillas*, No. ACM 40551, replying to two issues (after reviewing the Government's eighty page brief and

voluminous attachments); (3) Supplement to the Petition for Grant of Review in *United States v. Benoit*, USCA Dkt. No. 25-0106/AF, No. ACM 40508; (4) Petition and Supplement to the Petition for Grant of Review in *United States v. Cole*, USCA Dkt. No. 25-0117/AF, No. ACM 40189; (5) Petition for Writ of Extraordinary Relief in *In re Alton*, Misc. Dkt. No. 2024-12, for filing at the U.S. Court of Appeals for the Armed Forces (drafting with civilian counsel); (6) various motions in *United States v. Casillas*, No. ACM 40551, and *United States v. Daniels*, No. ACM 39407 (rem). She also prepared for and participated in moot arguments for *United States v. Jenkins*, No. ACM S32765, and *United States v. Taylor*, USCA Dkt. No. 24-0234/AF; and attended oral argument for *Taylor*. On 4 March 2025, undersigned counsel was also unexpectedly unable to complete work when her office was evacuated for several hours.

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

Respectfully submitted,

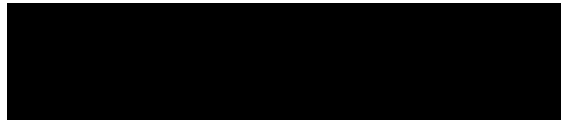


SAMANTHA P. GOLSETH, Maj, USAF
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Email: samantha.golseth@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 22 March 2025.

Respectfully submitted,



SAMANTHA P. GOLSETH, Maj, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|---------------------------|
| UNITED STATES, |) | UNITED STATES’ |
| <i>Appellee,</i> |) | OPPOSITION TO APPELLANT’S |
| |) | MOTION FOR ENLARGEMENT |
| |) | OF TIME |
| v. |) | |
| |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | |
| |) | 24 March 2025 |

**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 year-long delay practically ensure 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.

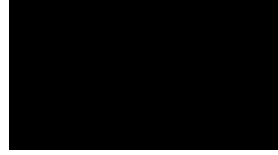
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
1500 W. Perimeter Road, Suite 1190
Joint Base Andrews, MD
DSN: 612-4809

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 March 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel
Government Trial & Appellate Operations
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DSN: 612-4809

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|------------------------------|---|----------------------------------|
| UNITED STATES, |) | CONSENT MOTION TO EXAMINE |
| <i>Appellee,</i> |) | SEALED MATERIALS |
| |) | |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force, |) | |
| <i>Appellant.</i> |) | 23 April 2025 |

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

Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves this Court to permit appellate defense counsel and appellate government counsel to view the sealed portions of Prosecution Exhibit 1 and Preliminary Hearing Exhibits 4-26. A.F. CT. CRIM. APP. R. 3.1(c)(2), 23.1(b), and 23.3(f)(1).

On 8 January 2024, a general court-martial composed of a military judge alone convicted SSgt Tompkins, consistent with his pleas, of two specifications of possessing child pornography, in violation of Article 134, Uniform Code of Military Justice,¹ 10 U.S.C. § 934. R. at 87; Charge Sheet. The convening authority took no action on the findings. Convening Authority Decision on Action. Prosecution Exhibit 1 contains a stipulation of fact and contraband which is attached to Prosecution Exhibit 1 in a compact disk. R. at 25-27; Exhibit Index. Preliminary Hearing Exhibits 4-26 also contain contraband images reviewed during the preliminary hearing. Continuation of Item 13a, DD Form 457: Exhibits. Prosecution Exhibit 1 and Preliminary Hearing Exhibits 4-26 were presented and sealed. R. at 27; DD Form 457.

Appellate counsel may examine sealed materials presented, reviewed, or released to

¹ *Manual for Courts-Martial, United States* (2019 ed.).

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

Appellate defense counsel detailed by the Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, *inter alia*, a duty to provide “competent representation,”² perform “reasonable diligence,”³ 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.”⁴ These requirements are consistent with those imposed by the state bar to which undersigned counsel belongs.⁵

Each of the sealed exhibits is an exhibit which was presented or reviewed by the parties at trial. To fulfill undersigned counsel’s duties, it is reasonably necessary to review the sealed materials to competently conduct a professional evaluation of SSgt Tompkins’ case and to uncover all issues which might afford him relief.

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

² Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1 (11 Dec. 2018).

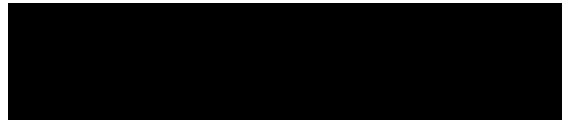
³ *Id.* at Rule 1.3.

⁴ AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

⁵ Undersigned counsel is licensed to practice law in California.

WHEREFORE, SSgt Tompkins respectfully requests this Honorable Court grant this motion and permit examination of the aforementioned sealed materials contained within the original record of trial.

Respectfully submitted,

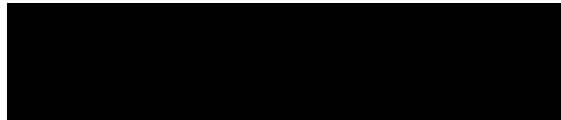


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CERTIFICATE OF FILING AND SERVICE

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 on 23 April 2025.

Respectfully submitted,



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

| | | |
|----------------------|---|----------------|
| UNITED STATES |) | No. ACM 40619 |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Nicholas C. TOMPKINS |) | |
| Staff Sergeant (E-5) |) | |
| U.S. Air Force |) | |
| <i>Appellant</i> |) | Panel 2 |

On 23 April 2025, Appellant’s counsel submitted a Consent Motion to Examine Sealed Materials, requesting counsel be allowed to examine certain portions of the record of trial ordered sealed. Specifically, counsel seeks to examine the attachments to Prosecution Exhibit 1, which are contained on a disc, and Preliminary Hearing Officer (PHO) Exhibits 4–26, which are contained on separate discs. Appellant’s counsel avers that “[e]ach of the sealed exhibits is an exhibit which was presented or reviewed by the parties at trial” and the “Government consents to this motion and to both parties viewing the [requested] sealed materials.”

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 23d day of April, 2025,

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **Prosecution Exhibit 1 and Preliminary Hearing Officer Exhibits 4–26** 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



OLGA STANFORD, Capt, USAF
Chief Commissioner

UNITED STATES,) **BRIEF ON BEHALF OF**
Appellee,) **APPELLANT**
))
v.) Before Panel No. 2
))
Staff Sergeant (E-5)) No. ACM 40619
NICHOLAS C. TOMPKINS,))
United States Air Force,) 1 May 2025
Appellant.)

1

of SSgt Tompkins's dependents. *Id.* The convening authority denied SSgt Tompkins's request to defer the reduction in grade until the entry of judgment. *Id.*

Statement of Facts

SSgt Tompkins pleaded guilty to two specifications of possessing child pornography, R. at 87, and each specification was subject to a maximum period of confinement of ten years, *Manual for Courts-Martial, United States (MCM)* (2019 ed.), pt. IV, ¶ 93.d.(1). At the time, 18 U.S.C. § 922(g) could prohibit firearm possession but only under specific circumstances. The specifications that SSgt Tompkins pleaded guilty to did not involve any allegations of violence, domestic or otherwise. 18 U.S.C. § 922(g)(9). And no evidence suggested that SSgt Tompkins was a “fugitive from justice,” an unlawful user of or addict to a controlled substance, “adjudicated as a mental defective,” or “committed to a mental institution.” 18 U.S.C. §§ 922(g)(2)-(4).

A Statement of Trial Results (STR) and Entry of Judgment (EOJ) were created after SSgt Tompkins's court-martial and the Staff Judge Advocate (SJA) indorsed both documents. STR at 3; EOJ at 4. The SJA's indorsements to both the STR and EOJ state SSgt Tompkins is subject to a “Firearm Prohibition Triggered Under 18 U.S.C. § 922.” *Id.* SSgt Tompkins is a United States citizen by birth and was a lawful possessor of firearms. Def. Ex. L at 2; Motion to Attach, 1 May 2025, Appendix (Declaration of Appellant).

Argument

The government cannot prove 18 U.S.C. § 922 is constitutional as applied to Staff Sergeant Tompkins because he was convicted of offenses that do not fall within the nation's historical tradition of firearm regulation, and this Court can and should order correction.

Standard of Review

Whether post-trial processing was properly completed is reviewed de novo. *United States v. Zegarrundo*, 77 M.J. 612, 613-14 (A.F. Ct. Crim. App. 2018) (citing *United States v. Kho*, 54

M.J. 63, 65 (C.A.A.F. 2000)). This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Vanzant*, 84 M.J. 671, 680 (A.F. Ct. Crim. App. 2024), *rev. granted*, USCA Dkt. No. 24-0182, ___ M.J. ___, 2024 CAAF LEXIS 640 (C.A.A.F. Oct. 17, 2024).

Law and Analysis

The Courts of Criminal Appeals possess “limited jurisdiction, defined entirely by statute.” *United States v. Arness*, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted). In *United States v. Williams*, 85 M.J. 121, 127 (C.A.A.F. 2024), the Court of Appeals for the Armed Forces recently rejected the authority of the Courts of Criminal Appeals to address the firearms prohibition in the STR under Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1). But this Court remains empowered by statute to correct the unconstitutional deprivation of SSgt Tompkins’s Second Amendment right to bear arms through Article 66(d)(2), UCMJ. 10 U.S.C. § 866(d)(2); *see also Williams*, 85 M.J. at 126-27 (considering relief under that statute but rejecting it only because of the unique procedural posture of the case).

Article 66(d)(2), UCMJ, authorizes this Court to “provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the” EOJ. 10 U.S.C. § 866(d)(2). SSgt Tompkins meets each of the statutory thresholds: (1) an error, (2) raised by SSgt Tompkins, (3) occurring after the entry of judgment under Article 60c, UCMJ. *Id.*; *Williams*, 85 M.J. at 126-27. As discussed below, because only one category of 18 U.S.C. § 922(g) could apply to SSgt Tompkins, and its reflection in his post-trial paperwork runs afoul of the superior protection found in the Second Amendment, this Court can and should order correction, consistent with its authority under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2).

1. SSgt Tompkins has demonstrated error: the unconstitutional application of 18 U.S.C. § 922(g).

Only one part of 18 U.S.C. § 922(g) could currently apply to SSgt Tompkins: 18 U.S.C. § 922(g)(1)'s prohibition arising from a conviction of a crime punishable by imprisonment for a term greater than one year, because SSgt Tompkins faced up to ten years for each offense. *MCM* (2019 ed.), pt. IV, ¶ 93.d.(1). 18 U.S.C. § 922(g)(6) does not currently apply because SSgt Tompkins has not yet been discharged from the Armed Forces. Yet, as discussed below, the purported application of either provision of 18 U.S.C. § 922(g) must yield to the superior protection afforded by the Constitution given the absence of violence in his case.

“The military has a hierarchical scheme as to rights, duties, and obligations.” *United States v. Romano*, 46 M.J. 269, 274 (C.A.A.F. 1997). Above all is the Constitution. *See id.* “While a lower source on the hierarchy may grant additional or greater rights than a higher source, those additional rights may not conflict with a higher source.” *Id.* As applied to SSgt Tompkins, the question then becomes: Does the application of the lifetime firearm ban enumerated in 18 U.S.C. § 922(g) comport with the Second Amendment?

When evaluating that question, the Supreme Court of the United States has articulated the governing test:

[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The [G]overnment must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 17 (2022) (quoting *Konigsberg v. State Bar of Cal.*, 336 U.S. 36, 49 n.10 (1961)).

Broadly speaking, and though not without limitation, the Second Amendment “confer[s] an individual right to keep and bear arms.” *District of Columbia v. Heller*, 554 U.S. 570, 595, 626 (2008). As such, the Second Amendment plainly covers SSgt Tompkins’s right to keep and bear arms, even after his conviction. As *Bruen* makes clear, it then falls on the Government to show why its lifetime regulation of that right comports with America’s “historical tradition of firearm regulation.” 597 U.S. at 17.

The Supreme Court took up the contours of this assessment in *United States v. Rahimi*, 602 U.S. 680 (2024). Concluding that 18 U.S.C. § 922(g)(8) “fits comfortably within [the Nation’s historical] tradition,” the court employed a methodology considering whether the regulation at issue is “relevantly similar”—as opposed to identical—to those acceptable to the Nation’s founding generation. *Id.* at 681, 690. The determination was clear under the facts specific to *Rahimi* because “the Government offer[ed] ample evidence that the Second Amendment permits the disarmament of individuals who pose” what the Court described as “a clear threat of physical violence to another.” *Id.* at 693, 698. But the Court cabined its approval, limiting its affirmance to *temporary* disarmament after a finding of a credible threat to physical safety. *Id.* at 682. In doing so, the Court noted the vital nexus found between 18 U.S.C. § 922(g)(8) and the historical tradition of “banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse.” *Id.* (citations omitted), *see also id.* at 701 (rejecting the contention “responsible” is the governing principle in any situation).

Rahimi’s limited approval comports with “‘longstanding’ precedent in America and pre-Founding England . . . that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates *a present danger that one will misuse arms against others and the disability redresses that danger.*” C. Kevin Marshall, *Why Can’t Martha Stewart*

Have a Gun, 32 Harv. J.L. & Pub. Pol’y 695, 698 (2009) (emphasis added). But here, SSgt Tompkins’s case never involved a threat to physical safety or a special danger of misuse.

Moreover, the Government has not proven—and cannot prove—that this ban as applied to SSgt Tompkins is consistent with this country’s history and tradition. Historically, a firearm disability has been applied to “those convicted of a ‘crime of violence.’” *Id.* at 699. A “crime of violence” meant “committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, larceny, burglary, and housebreaking.” *Id.* at 701 (cleaned up). By contrast, the possession of child pornography is not a crime of violence¹ and SSgt Tompkins’s convictions did not involve violence. And unlike *Rahimi*, the disarmament under 18 U.S.C. §§ 922(g)(1) or (g)(6) is not temporary; it will last forever.

SSgt Tompkins now seeks the constitutionally required relief from the statutory firearms ban for life set out in his post-trial paperwork. Such relief is mandated by the Government’s inability to satisfy the *Bruen* test through a historical analogue for a non-violent case like his. And such relief is within this Court’s power to provide because the erroneous application of the firearm prohibition occurred after entry of judgment.

2. The error on the indorsement to the EOJ occurred after the entry of judgment.

The alleged error is an “error . . . in the processing of the court-martial after the” entry of judgment. 10 U.S.C. § 866(d)(2). The applicable Air Force regulation required that “[a]fter the EOJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered.”

Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, ¶

¹ See *United States v. Mellies*, 496 F. Supp. 2d 930, 936 (M.D. Tenn. 2007) (explaining that possession of child pornography may be considered a “crime of violence” for purposes of assessing detention but is not considered to be a “crime of violence” in other legal contexts).

20.41 (Apr. 14, 2022) (emphasis added) (DAFI 51-201). The firearm denotation on the First Indorsement that accompanies the EOJ into the record of trial explicitly happens *after* the EOJ is signed by the military judge pursuant to Article 60c, UCMJ. *Id.* That is just what happened here, with the First Indorsement to the EOJ signed on 15 February 2024, one day after the military judge signed the EOJ. *Compare* EOJ at 3, *with* EOJ at 4.

3. Jurisdiction under Article 66(d)(1), UCMJ, is distinct from Article 66(d)(2), UCMJ.

When an error occurring after entry of judgment is raised by an appellant, Article 66(d)(2), UCMJ, provides an independent jurisdictional basis for this Court to conduct its duties. *Williams*, 85 M.J. at 126-27.

This Court’s authority to review the erroneous firearm ban under Article 66(d)(2), UCMJ, is also consistent with this Court’s published opinion in *Vanzant*, 84 M.J. 671. In *Vanzant*, this Court determined it did not have authority to act on collateral consequences that are not a part of the findings or sentence under Article 66(d)(1), UCMJ. *Id.* at *23 (“Article 66(d), UCMJ, provides that a [Court of Criminal Appeals] ‘may act only with respect to the findings and sentence as entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c]’”). The CAAF agreed with this interpretation. *Williams*, 85 M.J. at 126. But whereas *Vanzant* and *Williams* concern those matters leading up to the EOJ, SSgt Tompkins is asking this Court to review an error in post-trial processing after the EOJ under Article 66(d)(2), UCMJ, which this Court did not analyze in *Vanzant*. *See Vanzant*, 84 M.J. at 680 (quoting the language of Article 66(d)(1), UCMJ, not (d)(2)).

Vanzant does not control review of this issue as raised under Article 66(d)(2), UCMJ. *But see United States v. Lawson*, No. ACM 23034, 2024 CCA LEXIS 431, at *2 (A.F. Ct. Crim. App. Oct. 17, 2024) (broadly summarizing *Vanzant* as standing for the proposition that “the 18 U.S.C. § 922 firearm prohibition notation included in the staff judge advocate’s indorsement to the [EOJ]

is beyond a Court of Criminal Appeals’ statutory authority to review”). The characterization of *Vanzant* in *Lawson* is incorrect. The 18 U.S.C. § 922 firearm prohibition notation included in the First Indorsement to the EOJ is not beyond this Court’s statutory authority to review under Article 66(d)(2), UCMJ. *See Williams*, 85 M.J. at 126 (calling Article 66(d)(2), UCMJ, the “error-correction authority”); *but see, e.g., United States v. Pulley*, No. ACM 40438 (f rev), 2024 CCA LEXIS 442, at *3 (A.F. Ct. Crim. App. Oct. 24, 2024) (citing *Vanzant* and *Williams* for this Court’s inability to correct the firearm prohibition, but without analyzing Article 66(d)(2), UCMJ). Article 66(d)(1), UCMJ, is distinct, and that section is all *Vanzant* analyzes. Using the CAAF’s analysis in *Williams*, this Court should find jurisdiction under Article 66(d)(2), UCMJ, and ensure correction of the unconstitutional firearms error in post-trial processing.

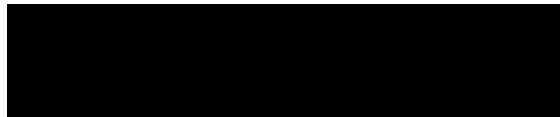
4. This Court can and should order correction under R.C.M. 1112(d)(2).

To effectuate any remedy, this Court should use its power under R.C.M. 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction. This is appropriate because the First Indorsement is a required component of the EOJ, albeit not part of the “findings” and “sentence,” and the error materially affects SSgt Tompkins’s constitutional rights. R.C.M. 1111(b)(3)(F); R.C.M. 1112(b)(9); DAFI 51-201, ¶ 20.41. Finally, even though the STR contains an indorsement as well, the operative indorsement is the one on the EOJ. DAFI 51-201, ¶ 29.33. The EOJ and indorsement are the “final disposition.” *Id.* Remanding the record for correction would change the firearm prohibition on the EOJ and correct the unconstitutional bar. Specifically, it would correct the erroneous indexing of SSgt Tompkins in the National Instant Criminal Background Check System (NICS), which is used nationwide by federal firearm licensees (FFL) to determine if someone is eligible to obtain a firearm. About NICS, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics>

(last visited Mar. 3, 2025). It would correct the indexing because the Air Force is required to update NICS following an appeal. Department of the Air Force Manual (DAFMAN) 71-102, *Air Force Criminal Indexing*, ¶ 4.4.3.1 (July 21, 2020) (incorporating guidance memorandum from Sept. 10, 2024), https://static.e-publishing.af.mil/production/1/saf_ig/publication/afman71-102/afman71-102.pdf (last visited Apr. 29, 2025); *see* NICS Indices, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/nics-indices> (last visited Apr. 29, 2025) (noting it is the contributing agency's responsibility to remove an individual from NICS indices if their prohibitor is no longer valid).

Therefore, this Court should remand the record to correct the EOJ's unconstitutional bar on SSgt Tompkins's right to keep and bear arms.

Respectfully submitted,

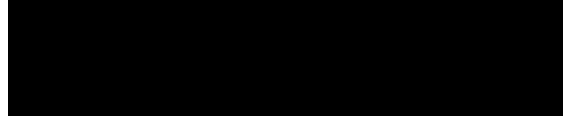


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CERTIFICATE OF FILING AND SERVICE

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 on 1 May 2025.

Respectfully submitted,



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

| | | |
|----------------------|---|----------------------|
| UNITED STATES |) | No. ACM 40619 |
| <i>Appellee</i> |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| Nicholas C. TOMPKINS |) | |
| Staff Sergeant (E-5) |) | |
| U.S. Air Force |) | |
| <i>Appellant</i> |) | Special Panel |

On 1 May 2025, Appellant submitted a motion to attach a declaration by Appellant dated 29 April 2025. Appellant contends this document is relevant to his assignment of error and this court should consider it, consistent with *United States v. Jessie*, 79 M.J. 437, 444 (C.A.A.F. 2020), because doing so “is necessary to resolve whether an injury in fact occurred when the Staff Judge Advocate’s indorsement to the entry of judgment stated [Appellant] was fire-arm prohibited.”

On 7 May 2025, the Government opposed the motion, stating *inter alia* the declaration “is not ‘necessary for resolving issues raised by materials in the record,’” quoting *Jessie*, 79 M.J. at 444.

Having considered Appellant’s motion, the Government’s opposition, and the applicable law, we grant the motion to attach. However, we defer consideration of the applicability of *United States v. Jessie* and related case law to the attachment until we complete our Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant’s case.

Accordingly, it is by the court on this 9th day of May, 2025,

ORDERED:

Appellant’s Motion to Attach dated 1 May 2025 is **GRANTED**.



FOR THE COURT

[Redacted signature]

OLGA STANFORD, Capt, USAF
Chief Commissioner

UNITED STATES,) **MOTION TO ATTACH**
Appellee,)
))
v.) Before Panel No. 2
))
Staff Sergeant (E-5)) No. ACM 40619
NICHOLAS C. TOMPKINS,)
United States Air Force,) 1 May 2025
Appellant.)

Pursuant to Rule 23(b) of this Honorable Court’s Rules of Practice and Procedure, Staff Sergeant (SSgt) Nicholas C. Tompkins, Appellant, hereby moves to attach his personal declaration found in the Appendix. Declaration of Appellant, 29 April 2025.

The attached declaration is relevant to this Court’s consideration of SSgt Tompkins’s assignment of error because it presents the factual bases that create a controversy in this case, the deprivation of his possession of firearms. This Court should attach this declaration to the record and consider its contents pursuant to *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), because it is necessary to resolve whether an injury in fact occurred when the Staff Judge Advocate’s indorsement to the entry of judgment stated SSgt Tompkins was firearm prohibited. *B.M. v. United States*, 84 M.J. 314, 317 (C.A.A.F. 2024); Entry of Judgment at 4.

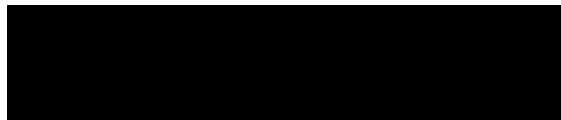
As a prudential matter, this Court follows the principles of standing that apply to Article III courts. *United States v. Wuterich*, 67 M.J. 63, 69 (C.A.A.F. 2008). In accordance with these principles, this Court only addresses claims raised by parties who can show “an injury in fact, causation, and redressability.” *Id.* (citing *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 273, 128 S. Ct. 2531, 171 L. Ed. 2d 424 (2008)).

Id. SSgt Tompkins's declaration outlines the specific, particularized injury to him as a result of the 18 U.S.C. § 922 prohibition on the Staff Judge Advocate's indorsement to the entry of

judgment. Declaration of Appellant, 29 April 2025.

WHEREFORE, SSgt Tompkins respectfully requests that this Court grant this motion to attach.

Respectfully submitted,

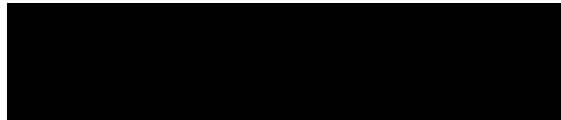


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CERTIFICATE OF FILING AND SERVICE

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 on 1 May 2025.

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|---|---|----------------------------------|
| UNITED STATES, <i>Appellee,</i> |) | UNITED STATES’ OPPOSITION |
| |) | TO APPELLANT’S |
| |) | MOTION TO ATTACH |
| v. |) | |
| |) | Before Panel No. 2 |
| Staff Sergeant (E-5) |) | |
| NICHOLAS C. TOMPKINS, |) | No. ACM 40619 |
| United States Air Force |) | |
| <i>Appellant.</i> |) | 7 May 2025 |

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

Under Rule 23.2 of this Honorable Court’s Rules of Practice and Procedure, the United States opposes Appellant’s motion to attach Appendix – his declaration dated 29 April 2025.

Appellant was found guilty, pursuant to his pleas, of one charge and two specifications of possessing child pornography in violation of Article 134, UCMJ.

Appellant asserts that 10 U.S.C. § 922 (firearms prohibition) is unconstitutional as applied to him and warrants correction. (App Br. at 1). The crux of his argument is that this court has jurisdiction to invalidate the collateral consequence of the firearms prohibition through Article 66(d)(2), UCMJ. He claims that the collateral consequence is an “error in post-trial processing after the EOJ” based on the timing of the signing of the first indorsement and the alleged unconstitutionality of the prohibition. (App. Br. at 6-7)(citing Article 66(d)(2), UCMJ).

This Court requires a motion to attach filed under Rule of Practice and Procedure (Rule) 23.3 to set forth the basis for which the filing shall be permitted. Rule 23.3(b) further requires the proponent to state the “relevance and necessity to the case.”

The record of trial contains the entry of judgement (EOJ) and all the facts supporting

Appellant's finding of guilt for child pornography in violation of Article 134, UCMJ in both the stipulation of fact and plea colloquy. (Electronic ROT Vol. 1, *EOJ; First Indorsement to EOJ*; Pros. Ex. 1, *Stipulation of Fact*; R. at 27-70).

Appellant's declaration does not address the legal argument of the court's jurisdiction or any information to support his claim that his possession of pornography was not a crime of violence. It only explains that prior to his conviction he used to own firearms, and he would like to own firearms again, but he is subject to a firearms restriction.

ANALYSIS

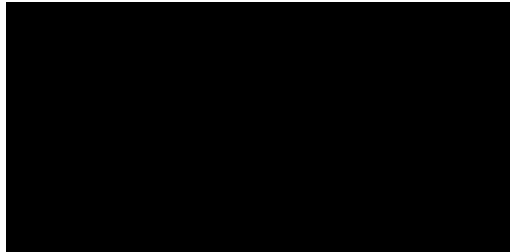
This Court should deny Appellant's motion to attach Appendix because Appellant has failed to comply with this Court's rules, and the declaration that Appellant would like to possess firearms is not "necessary for resolving issues raised by materials in the record." United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020).

Whether this Court has jurisdiction to invalidate the firearms prohibition collateral consequence, and whether the firearms prohibition is constitutional as applied to Appellant are "fully resolvable by the materials in the record." Jessie, 79 M.J. at 443. This Court need only look to the law, the EOJ, stipulation of fact and transcript to evaluate the issues of jurisdiction and constitutionality of the firearms prohibition.

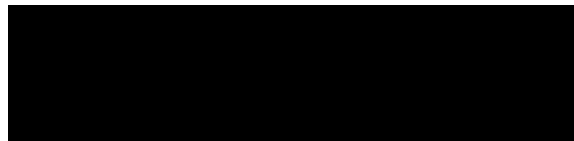
Moreover, Appellant seeks to attach extra-record material to establish the injury required for an actionable "case or controversy." (App. Mot. at 1.) But the Court's right to act on a case or controversy "*must* be subordinate to those requirements of form and orderly communication which regulate the mode of bringing controversies into court." Arkansas v. Kan. & Tex. Coal Co., 183 U.S. 185, 190 (1901). The proper "mode of bringing controversies into court" is to ensure they are raised by the record. *See* Lewis v. Cont'l Bank Corp., 494 U.S. 472, 480 (1990)

(remanding a case because the controversy appeared terminated “on the face of the record.”); Mountain View Mining & Milling Co. v. McFadden, 180 U.S. 533, 535 (1901) (judicial knowledge cannot be used to raise controversies “not presented by the record.”) Therein lies the issue. Allowing Appellant to raise a controversy through supplementary material would circumvent the requirement that it be raised by the record.

WHEREFORE, the United States respectfully requests this Court deny Appellant’s motion to attach Appendix.



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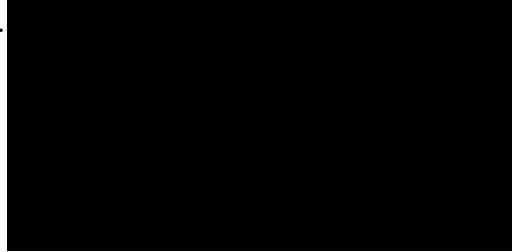


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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force

Appellate Defense Division on 7 May 2025.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

| | | |
|---|---|----------------------------------|
| UNITED STATES, <i>Appellee,</i> |) | ANSWER TO ASSIGNMENT OF ERROR |
| |) | |
| |) | |
| v. |) | Before Panel No. 2 |
| |) | |
| Staff Sergeant (E-5) |) | No. ACM 40619 |
| NICHOLAS C. TOMPKINS |) | |
| United States Air Force |) | 2 June 2025 |
| <i>Appellant.</i> |) | |

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

ISSUE PRESENTED

I.

**WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. §
922 IS CONSTITUTIONAL AS APPLIED TO STAFF
SERGEANT TOMPKINS WHEN HE WAS CONVICTED OF
OFFENSES THAT DO NOT FALL WITHIN THE NATION’S
HISTORICAL TRADITION OF FIREARM REGULATION,
AND WHETHER THIS COURT CAN ORDER
CORRECTION.**

STATEMENT OF CASE

On 20 July 2023 and 8 January 2024, a general court-martial convened at Ramstein Air Base, Germany. (R. at 1, 10.) Pursuant to a plea agreement, Appellant pleaded guilty to one charge and two specifications of possession of child pornography, in violation of Article 134, UCMJ. (*Entry of Judgment*, 14 February 2024, ROT, Vol. 1.) Appellant elected to be sentenced by the military judge. (R. at 16.) The military judge sentenced Appellant to a reprimand, to be reduced to the rank of E-1, confinement for 24 months for Specification 1 of the Charge and 36 months for Specification 2 of the Charge with the sentences to run concurrently, and a

dishonorable discharge. (R. at 159.) After considering Appellant’s post-trial submissions, the convening authority took no action on the findings in Appellant’s case. (*Convening Authority Decision on Action*, dated 30 January 2024, ROT, Vol. 1.) The convening authority waived all automatic forfeitures for a period of six months and suspended his reduction in rank for six months to allow Appellant’s to the benefit of Appellant’s wife and children. (Id.)

STATEMENT OF FACTS

Appellant was convicted of two specifications of possession of child pornography, in violation of Article 134, UCMJ. (*Entry of Judgment*, 14 February 2024, ROT, Vol. 1.) The statutory maximum punishment for each of Appellant’s convictions was forfeiture of all pay and allowances, confinement for ten years, and a dishonorable discharge. MCM, pt. IV, para. 95.d.(1)¹.

The Staff Judge Advocate’s (SJA) First Indorsement to the Entry of Judgement (EOJ) and Statement of Trial Results (STR) in Appellant’s case contains the following statement: “Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes.” (*Entry of Judgment*, 14 February 2024, ROT, Vol. 1; *Statement of Trial Results*, 16 January 2024, ROT, Vol. 1.)

¹ All references to the UCMJ, the Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (M.R.E.) are to the Manual for Courts-Martial, United States (2019 ed.) [MCM], unless otherwise noted.

ARGUMENT

I.

THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ. EVEN IF THIS COURT DID POSSESS JURISDICTION TO REVIEW THIS ISSUE, AIR FORCE INSTRUCTIONS REQUIRED THE STATEMENT OF TRIAL RESULTS AND ENTRY OF JUDGMENT TO ANNOTATE APPELLANT’S CRIMINAL INDEXING. FINALLY, 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT.

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

Law and Analysis

The Gun Control Act of 1968, 18 U.S.C. § 922, makes it unlawful for any person, *inter alia*, “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year,” to possess a firearm. 18 U.S.C. § 922(g)(1).

Appellant asserts that 18 U.S.C. § 922 is unconstitutional as applied to him. (App. Br. at 4.) Appellant asserts that under the Second Amendment, U.S. CONST. AMEND. II, and N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1 (2022), the government cannot show that there is a historical tradition in applying a firearm ban in Appellant’s case. (App. Br. at 4-6.) Appellant’s constitutional argument is without merit and is a collateral matter beyond this Court’s authority to review.

1. This Court lacks jurisdiction to determine whether Appellant should be criminally indexed in accordance with 18 U.S.C. § 922.

This Court recently held in its published opinion in United States v. Vanzant, that 18 U.S.C. § 922(g)'s firearm prohibition and the criminal indexing requirements that follow that statute are collateral consequences of the conviction, rather than elements of the findings or sentence—thus, they are beyond the scope of this Court's jurisdiction under Article 66(d)(1), UCMJ. 84 M.J. 671, 681 (A.F. Ct. Crim. App. 2024).

Appellant's argument that this Court could provide relief under Article 66(d)(2) also fails because Article 66(d)(2) does not grant this Court the authority to modify the 18 U.S.C. § 922 annotation on the First Indorsement of the STR or the EOJ. "Article 66(d)(2), UCMJ, only authorizes a CCA to provide relief when there has been an 'error or excessive delay in the processing of the court-martial.'" United States v. Williams, 2024 CAAF LEXIS 501, *14 (C.A.A.F. 5 September 2024). In Williams, CAAF pointed to three statutory conditions that must be met before this Court may review a post-trial processing error under Article 66(d)(2): (1) an error must have occurred; (2) an appellant must raise a post-trial processing error with this Court; and (3) the error must have occurred after the judgment was entered. Id.

The military judge enters the court-martial judgment into the record via the EOJ. 10 U.S.C. § 860c(a)(1). By statute, the EOJ includes the STR. 10 U.S.C. § 860c(a)(1)(A). The STR contains: (1) "each plea and finding;" (2) "the sentence, if any; and (3) "such other information as the President may prescribe by regulation." 10 U.S.C. § 860(a)(1). The President prescribed that "[a]ny additional information directed by the military judge or required under regulations prescribed by the Secretary concerned" may be added to the STR. R.C.M. 1101(a)(6). Our superior Court determined an annotation on the STR notifying the Appellant of

an 18 U.S.C. § 922 firearm prohibition constituted “other information” as required by R.C.M. 1101(a)(6). Williams, 2024 CAAF LEXIS 501, *12-13.

Following the President’s instructions in R.C.M. 1101(a)(6), the Secretary of the Air Force required “other information” be provided in a First Indorsement attached to the STR. Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, para. 20.6 (dated 14 April 2022). On the STR, the SJA must annotate whether “firearm prohibitions are triggered.” (Id.) The Secretary of the Air Force also requires a First Indorsement to the EOJ that also states whether a firearm prohibition is triggered by a conviction. DAFI 51-201, para. 20.41. “In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA.” DAFI 51-201, para. 20.39.

Firstly, while Appellant has requested relief under the second prong of Article 66(d)(2), the 18 U.S.C. § 922 firearm annotation was neither an error, nor one that occurred after the judgment of the court-martial was entered on the record. The 18 U.S.C. § 922 annotation on the First Indorsement of the STR and the EOJ were not errors because they accurately stated that the firearm prohibition applied to Appellant in accordance with federal law. Secondly, because the STR and the First Indorsement are entered into the record before the EOJ is entered into the record under Article 60c, the § 922 annotation on the STR’s First Indorsement is not an error occurring “*after* the judgment was entered into the record.” 10 U.S.C. § 866(d)(2) (emphasis added).

2. The Statement of Trial Results and Entry of Judgment were prepared correctly in accordance with the applicable Air Force Instruction.

Even if this Court has jurisdiction to review this issue, Appellant was found guilty of two specifications of possession of child pornography. Possession of child pornography is punishable by imprisonment for a term exceeding one year. (MCM, pt. IV, para. 95.d.(1); R. at 70.) Thus, the Staff Judge Advocate followed the appropriate Air Force regulations in signing the first indorsement to the STR and the EOJ. DAFI 51-201, paras. 29.30, 29.32.

3. The Firearm Prohibition is constitutional as applied to Appellant because this nation has a historical tradition of disarming the dangerous.²

The Second Amendment provides: “[a] well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST., amend. II. But as the Supreme Court has repeatedly emphasized, “the right secured by the Second Amendment is not unlimited.” District of Columbia v. Heller, 554 U.S. 570, 626 (2008); see Bruen, 597 U.S. at 20; McDonald v. City of Chicago, 561 U.S. 742, 786 (2010) (plurality opinion). “[T]he right was *never* thought to sweep indiscriminately.” United States v. Rahimi, 602 U.S. 680, 691 (2024).

While the Amendment guarantees “the right of *law-abiding, responsible citizens* to use arms for self-defense,” Bruen, 597 U.S. at 26 (emphasis added), the same cannot be said for those who have broken the law. The history of firearms regulation reflects “a concern with keeping firearms out of the hands of categories of potentially irresponsible persons, including convicted felons,” Barrett v. United States, 423 U.S. 212, 220 (1976), and “an intent to impose a firearms disability on *any* felon based on the fact of conviction.” Lewis v. United States, 445

² Although analysis of this assignment of error should start and end with the scope of this Court’s jurisdiction, the United States addresses, *arguendo*, Appellant’s claim that 18 U.S.C. § 922 is unconstitutional as applied to him.

U.S. 55, 62 (1980) (emphasis added). Firearms prohibitions for felons are “presumptively lawful.” Rahimi, 602 U.S. at 735 (citing Heller, 554 U.S. at 626). Because Appellant has been convicted by a general court-martial of a serious crime, application of 18 U.S.C. § 922(g) to him is constitutional.

For Appellant, therein lies the rub. As someone whose right to possess firearms was restricted as a consequence of his conviction, Appellant is in a fundamentally different position than the law-abiding, non-criminal petitioners in Bruen, Heller, and McDonald.³ For Appellant—now a felon—falls into a class of non-law abiding, “irresponsible persons.” Barrett, 423 U.S. at 220. And despite his suggestions to the contrary, the fact that Appellant’s crime did not involve *physical* violence does not absolve him of his sins.

The plain language of 18 U.S.C. § 922 makes no distinction between violent and non-violent felonies. The law has often treated non-violent offenses as harshly as it has violent offenses. *See, e.g.*, 2 RECORDS OF THE COURT OF ASSISTANTS OF THE COLONY OF THE MASSACHUSETTS BAY 1630-1692, at 32 (John Noble ed., 1904) (punishing theft by ordering, among other penalties, that “all his estate shalbe forfected”); Act of Feb. 21, 1788, ch. 37, 1788 N.Y. Laws 664-65 (authorizing the death penalty for theft of chattels worth over five pounds); Kathryn Preyer, *Crime and Reform in Post-Revolutionary Virginia*, 1 LAW & HIST. REV. 53, 73 (1983) (those convicted of horse theft were often subject to the death penalty).

Moreover, this nation has a historical tradition of disarming not only violent offenders, but also “dangerous persons.” In the early days of the republic, the law was frequently used to

³ *See* Bruen, 597 U.S. at 8 (where “law-abiding New York residents” challenged a state restriction on carrying a firearm outside the home); Heller, 554 U.S. at 573 (where a policeman challenged the District of Columbia’s ban on handgun possession in the home); McDonald, 561 U.S. at 790 (challenging a city ordinance that effectively banned “law-abiding members of the community” from having handguns in the home).

disarm groups that were considered dangerous, such as British loyalists. *See* Joseph Blocher & Caitlan Carberry, *Historical Gun Laws Targeting “Dangerous” Groups and Outsiders*, DUKE LAW SCHOOL PUBLIC & LEGAL THEORY SERIES NO. 2020-80 (2020). This tradition of disarming the dangerous endures today—in part, through the “longstanding prohibitions on the possession of firearms by felons,” which the Supreme Court has identified as “presumptively lawful regulatory measures.” Heller, 554 U.S. at 626, 627 n.26.

In the modern age, dangerousness cannot be defined by physical violence alone. Thus, it matters little that Appellant’s crime did not involve physical violence. As the world has evolved, crime has evolved with it. There are more laws to violate than there were in the Founding Era, more ways to violate them, and more ways to be dangerous as a result. Child pornography is a continuing crime: it is “a permanent record of the depicted child’s abuse, and the harm to the child is exacerbated by [Appellant’s consumption].” Paroline v. United States, 572 U.S. 434 (2014). Thus, those convicted of such offenses are required to register as sex offenders—even if they did not personally abuse the child. *See* 34 U.S.C. § 20911.

Such sex offenders “are a serious threat in this Nation.” McKune v. Lile, 536 U.S. 24, 32 (2002). Their risk of recidivism is “frightening and high,” Smith v. Doe, 538 U.S. 84, 103 (2003) (citation omitted), and when they reenter society, “they are much more likely than any other type of offender to be rearrested for a new [sex offense].” McKune, 536 U.S. at 33. For offenders like Appellant—someone who by his own admission specifically sought out child pornography—recidivism translates into a continued interest in child pornography and sexual abuse of children. This interest in child pornography creates a demand for it, which “harms children in part because it drives production, which involves child abuse.” Paroline, 572 U.S. at 439-40. The materials produced are “a permanent record of the depicted child’s abuse, and the

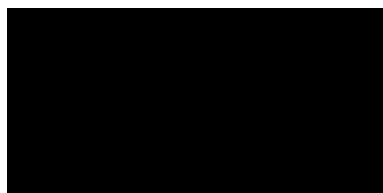
harm to the child is exacerbated by [its] circulation.” Id. at 440 (alteration in original) (internal quotation marks and citation omitted). Consequently, Appellant poses a real threat to our most vulnerable demographic—children. *See McKune*, 536 U.S. at 32 (“[T]he victims of sexual assault are most often juveniles.”).

Appellant may not be a physically violent offender, but he is a danger to our society nonetheless. *See New York v. Ferber*, 458 U.S. 747, 758 n.9 (1982) (“[The] use of children as...subjects of pornographic materials is very harmful to both the children and the society as a whole.”). Given this nation’s historical tradition of disarming dangerous persons, 18 U.S.C. § 922 is constitutional as applied to Appellant, and he is not entitled to relief.

Ultimately, the constitutional question posed here is unrelated to the actual findings and sentence in the case, and therefore outside the scope of this Court’s authority. Thus, as discussed above, Appellant is not only unentitled to relief, but also powerless to obtain any from this Court at all.

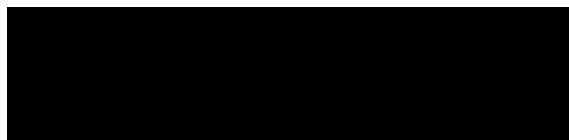
CONCLUSION

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.



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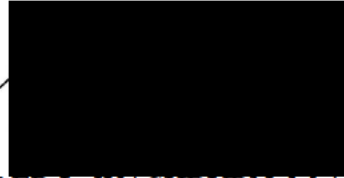


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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force

Appellate Defense Division on 2 June 2025.



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