IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	))))))))))	**NOTICE OF DIRECT APPEAL PURSUANT TO ARTICLE 66(b)(1)(A), UCMJ** No. ACM SXXXXX 12 December 2023

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

On 26-30 June 2023, a special court-martial composed of officer members convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his plea, of one charge and specification of unlawful drug use in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a (2019); and one charge and specification of dereliction of duty in violation of Article 92, UCMJ, 10 U.S.C. § 892 (2019). The panel sentenced MSgt Torres Gonzalez to a reprimand, reduction to the grade of E-6, and three days of confinement. Record of Trial (ROT) Vol. 1, Entry of Judgment, dated 17 July 2022; Vol. 4, page 172.

On 19 September 2023, the Government purportedly sent MSgt Torres Gonzalez the required notice by mail of his right to appeal within 90 days. Pursuant Article 66(b)(1)(A), UCMJ, MSgt Torres Gonzalez files his notice of direct appeal with this Court.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4784
Email: michael.bruzik@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 12 December 2023.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4784
Email: michael.bruzik@us.af.mil

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM _____**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Luis A. TORRES GONZALEZ	)	**DOCKETING**
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	

On 12 December 2023, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A).

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

Accordingly, it is by the court on this 12th day of December, 2023,

ORDERED:

The case in the above-styled matter is referred to Panel 3.

It is further ordered:

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

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM _____**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Luis A. TORRES GONZALEZ	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 12 December 2023, Appellant filed a "Notice of Direct Appeal Pursuant to Article 66(b)(1)(A), UCMJ," with this court. The above-styled case was docketed on 12 December 2023 and the court ordered the Government to "forward a copy of the record of trial to the court forthwith." Over 90 days have elapsed and, to date, the record has not been provided to the court.

Accordingly, it is by the court on this 19th day of March, 2024,

ORDERED:

Government appellate counsel will inform the court in writing not later than **2 April 2024** of the status of this case with regard to this court's 12 December 2023 order.

FOR [redacted]
OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*	)	UNITED STATES' NOTICE OF STATUS OF COMPLIANCE
v.	)	Before Panel No. 3
Master Sergeant (E-7) **LUIS A. TORRES GONZALEZ**, USAF *Appellant*	)	No. ACM _____ 2 April 2024

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

Pursuant to this Court's 19 March 2024 order, the United States hereby provides notice of status of compliance.

On 12 December 2023, Appellant filed a "Notice of Direct Appeal Pursuant to Article 66(b)(1)(A), UCMJ," with this Court. The above-styled case was docketed on 12 December 2023 and the Court ordered the Government to "forward a copy of the record of trial to the court forthwith." (*Order*, dated 12 December 2023.) This Court further ordered, "Government appellate counsel will inform the court in writing not later than 2 April 2024 of the status of this case with regard to this court's 12 December 2023 order." (*Order*, dated 19 March 2024.)

As of the date of this notice, the base legal office mailed the record of trial, along with three copies of the verbatim transcript, to JAJM via certified mail on 2 April 2024. With the Court's permission, JAJG will provide another update no later than 30 days from the date of this notice, 2 May 2024, if the record of trial and verbatim transcript have not been served on the Court by this date.

WHEREFORE, the United States requests this Honorable Court accept this filing as confirmation of the Government's compliance with its 12 December 2023 and 19 March 2024 orders.

[redacted]
VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Counsel Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

[redacted]
STEVEN R. KAUFMAN, Colonel, USAF
Appellate Government Counsel
Government Trial and Appellate Operations
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

FOR

[redacted]
MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations
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 Appellate Defense Division on 2 April 2024.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Counsel Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24001**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Luis A. TORRES GONZALEZ	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 11 June 2024, counsel for Appellant submitted a corrected 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 12th day of June, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **17 August 2024.**

Beginning with the fifth request for enlargement of time shall, in addition to the matters required under this court's Rules of Practice and Procedure, include a statement as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.

Appellant's counsel are 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

[redacted]

FLEMING E. KEEFE, Capt, USAF
Deputy Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	11 June 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, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **17 August 2024**. This case was docketed with this Court on 12 December 2023. This Court received the record of trial and signed for it on 19 April 2024.[1] Since the date of receipt and signature, 53 days have elapsed. On the date requested, 120 days will have elapsed.

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

Respectfully submitted,

[redacted]

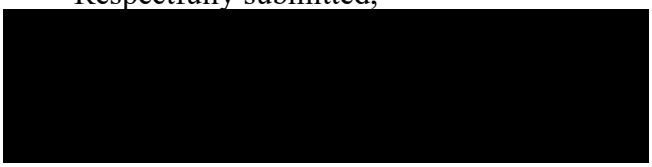
MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

[1] Undersigned counsel originally submitted a motion for first enlargement of time in this case on 10 June 2024. Counsel respectfully withdraws that motion and submits this one instead, in order to accurately document the date of docketing and the date of receipt and signature.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 11 June 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

11 June 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24001 Panel No. 3

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 June 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	9 August 2024

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 September 2024**. This case was docketed with this Court on 12 December 2023. This Court received the record of trial and signed for it on 19 April 2024. Since the date of receipt and signature, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Conzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order in violation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three days of confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

ecord of trial consists of six volumes and a 608-page transcript. There are 46 xhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently in confinement.

GRANTED
13 Aug 2024

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Of those, the following cases are counsel's highest priorities:

1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its tenth enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting and assignment of errors.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 134 page transcript. This case is on its eighth enlargement of time. Counsel has completed an initial review of the remanded record of trial.
3) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its sixth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 9 August 2024.

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

13 August 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24001 Panel No. 3

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 13 August 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	9 September 2024

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **16 October 2024**. This case was docketed with this Court on 12 December 2023. This Court received the record of trial and signed for it on 19 April 2024. Since the date of receipt and signature, 143 days have elapsed. On the date requested, 180 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order in violation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three days of confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

ecord of trial consists of six volumes and a 608-page transcript. There are 46 xhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently

nt.

GRANTED
12 SEP 2024

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Of those, the following cases are counsel's highest priorities:

1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its eleventh enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting and assignment of errors.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 134 page transcript. This case is on its ninth enlargement of time. Counsel has completed an in-depth review of the record of trial and has begun drafting an assignment of errors.
3) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its seventh enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 9 September 2024.

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

11 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 24001 Panel No. 3

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 September 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	9 October 2024

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 November 2024**. This case was docketed with this Court on 12 December 2023. This Court received the record of trial and signed for it on 19 April 2024. Since the date of receipt and signature, 173 days have elapsed. On the date requested, 210 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order in violation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three days of confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

The record of trial consists of six volumes and a 608-page transcript. There are 46 ns exhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently ement.

GRANTED
15 Oct 2024

Undersigned counsel is currently assigned 20 cases; 13 cases are pending initial AOEs before this Court. Of those, the following cases are counsel's highest priorities:

1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its twelfth enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting and assignment of errors with civilian counsel.
2) *United States v. Martinez*, ACM 39903 (reh) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 81 appellate exhibits, and includes a 134 page transcript. This case is on its tenth enlargement of time. Counsel has nearly completed an assignment of errors.
3) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its eighth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete his review of Appellant's case. Counsel has been working diligently to complete work on *United States v. Martinez*, while also lending support towards an assignment of errors for *United States v. Hilton* with civilian counsel. Counsel has had to balance this while preparing for oral arguments in *United States v. Saul* which is before the Court of Appeals for the Armed Forces. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 9 October 2024.

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

15 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 24001 Panel No. 3

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

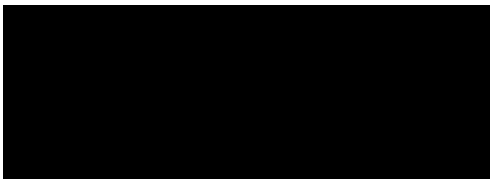
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 15 October 2024.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	7 November 2024

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 December 2024**. This case was docketed with this Court on 12 December 2023. This Court received the record of trial and signed for it on 19 April 2024. Since the date of receipt and signature, 202 days have elapsed. On the date requested, 240 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order in violation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three days of confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

The record of trial consists of six volumes and a 608-page transcript. There are 46 pr hibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently i Appellant has been advised of his right to speedy appellate review as well as this

GRANTED
18 NOV 2024

request. Appellant agrees to the request. Additionally, counsel has provided Appellant an update as to the status of the case. Counsel asserts attorney-client privilege concerning the substance of those communications.

Undersigned counsel is currently assigned 20 cases; 11 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its thirteenth enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting and assignment of errors.
2) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time.
3) *United States v. Titus*, ACM 40557 - The record of trial consists of four volumes. The transcript is 142 pages. There are five prosecution exhibits, five defense exhibits, 31 appellate exhibits, and five court exhibits. This case is on its eighth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete an in-depth review of Appellant's case. Counsel continues to work on *United States v. Hilton* with civilian counsel. Additionally, counsel is working towards completion of an assignment of errors in *United States v. Jenkins* with the intention of not asking for any further enlargements of time. Counsel has also been busy working supplements for petition of review before the Court of Appeals for the Armed Forces in *United States v. Bates* and *United States v. Vargo*.

Although counsel has completed an initial review of this case and identified potential errors, he has been unable to dedicate the time necessary to begin working on an assignment of errors. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 November 2024.

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

13 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 24001 Panel No. 3

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

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

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

[redacted]

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

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 13 November 2024.

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

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	6 December 2024

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 January 2025**. This case was docketed with this Court on 12 December 2023. This Court received the record of trial and signed for it on 19 April 2024. Since the date of receipt and signature, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order in violation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three days of confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

The record of trial consists of six volumes and a 608-page transcript. There are 46 ions exhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently inement. Appellant has been advised of his right to speedy appellate review as well as this

GRANTED
13 DEC 2024

request. Appellant agrees to the request. Additionally, counsel has been in communication with appellant concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege concerning the substance of those communications.

Undersigned counsel is currently assigned 20 cases; 11 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

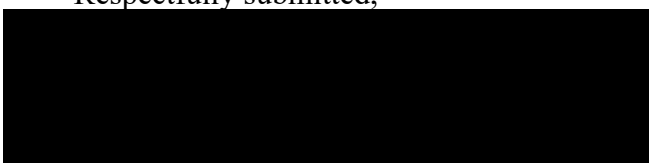
1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its fourteenth enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting an assignment of errors along with civilian counsel.
2) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its tenth enlargement of time. Counsel is working towards completion of an assignment of errors.
3) *United States v. Titus*, ACM 40557 - The record of trial consists of four volumes. The transcript is 142 pages. There are five prosecution exhibits, five defense exhibits, 31 appellate exhibits, and five court exhibits. This case is on its ninth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete an in-depth review of Appellant's case. Counsel has been busy working towards completion of an assignment of errors for *United States v. Jenkins*. The brief for that case is due to this Court on 12 December 2024, and Counsel worked on it through the Thanksgiving weekend. Additionally, counsel has been working with civilian counsel in *United*

States v. Hilton, which required him to dedicate time to coordinate the transmission of sealed exhibits. Counsel has had to balance his work before this Court with other priorities before the Court of Appeals for the Armed Forces (CAAF). On 13 November 2024, counsel submitted a supplement for petition for review to the CAAF in *United States v. Bates*. This supplement addressed five issues. Additionally, counsel submitted a supplement for petition for review and a response to motion to dismiss to the CAAF in *United States v. Vargo* on 20 November 2024. Counsel worked through the weekend on 16 November 2024 in order to comply with the deadline set by the CAAF, while tending to a lingering illness that required him to go home from the office on multiple days. Additionally, counsel was on leave between 30 October 2024 and 5 November 2024. These circumstances and priorities have prevented counsel from being able to dedicate the time necessary for this case beyond a preliminary review. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

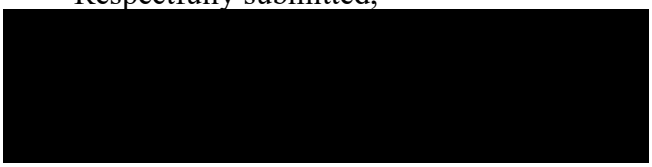


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

10 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 24001 Panel No. 3

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

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

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

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

CERTIFICATE OF FILING AND SERVICE

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

[redacted]

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

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24001**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Luis A. TORRES GONZALEZ	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 7 January 2025, Appellant filed a Motion for Enlargement of Time (Seventh), requesting an additional 30 days in which to file his assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 13th day of January, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Seventh) is **GRANTED**. Appellant shall file any assignments of error not later than **13 February 2025**.

Additional motions for enlargement of time may necessitate a status conference.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	7 January 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignment of Errors (AOE).[1] Appellant requests an enlargement for a period of 30 days, which will end on **13 February 2025**. This case was docketed with this Court on 12 December 2023.[2] This Court received the record of trial with the verbatim transcript and signed for it on 19 April 2024. Since the date of receipt and signature, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order in violation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three

[1] Counsel originally filed for a seventh enlargement of time in this case on 7 January 2025 at approximately 1713. However, that motion did not specify that the date that this court received the record of trial on 19 April 2024 included this Court's receipt of the verbatim transcript. Counsel respectfully withdraws that motion and submits this one instead.

[2] From the date of docketing until the present, 392 days have elapsed. From the date of docketing until the date requested, 429 days will have elapsed.

days of confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecutions exhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to speedy appellate review as well as this request. Appellant agrees to the request. Additionally, counsel has been in communication with appellant concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege concerning the substance of those communications.

Undersigned counsel is currently assigned 20 cases; 10 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Rodriguez*, ACM 40565 – The record of trial consists of two volumes. The transcript is 86 pages. There are two prosecution exhibits, six defense exhibits, and five appellate exhibits. This case is on its ninth enlargement of time.
2) *United States v. Sanger*, ACM S32773 – The record of trial consists of two electronic volumes. The transcript is 141 pages. There are four prosecution exhibits, one defense exhibit, and four appellate exhibits. This case is on its seventh enlargement of time.
3) *United States v. Licea*, ACM 40602 - The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are 12 prosecution exhibits, five defense exhibits, 22 appellate exhibits, and one court exhibit. This case is on its sixth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters which has prevented him from completing an in-depth review of the record of trial. Counsel was occupied with the completion of an assignment of errors for *United States v.*

Jenkins, which counsel worked on through the Thanksgiving weekend and submitted to this Court on 12 December 2024. Additionally, counsel worked through his leave over the Christmas holiday to complete work on an assignment of errors for *United States v. Hilton*, which was submitted to this Court on 27 December 2024. Counsel is also occupied with the completion of a supplement for petition for review for the Court of Appeals for the Armed Forces in *United States v. Scott* which counsel worked on through the New Year holiday in order submit on 7 January 2025. Accordingly, an enlargement of time is necessary for counsel to continue reviewing the record of trial and to advise appellant on potential errors.

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

Respectfully submitted,

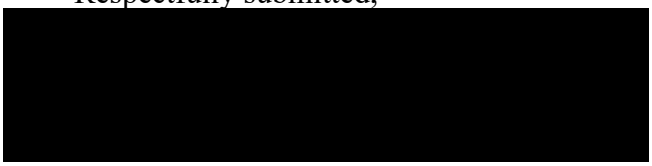
[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 January 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

10 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 24001 Panel No. 3

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

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

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

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

[redacted]
MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate 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 10 January 2025.

[redacted]
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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	6 February 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his eighth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **15 Farch 2025**. This case was docketed with this Court on 12 December 2023.[1] This Court received the record of trial with the verbatim transcript and signed for it on 19 April 2024. Since the date of receipt and signature, 293 days have elapsed. On the date requested, 330 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order lation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

GRANTED
11 FEB 2025

[1] From the date of docketing until the present, 422 days have elapsed. From the date of docketing until the date requested, 459 days will have elapsed.

The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecutions exhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to speedy appellate review as well as this request. Appellant agrees to the request. Additionally, counsel has been in communication with appellant concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege concerning the substance of those communications.

Undersigned counsel is currently assigned 20 cases; 9 cases are pending initial AOEs before this Court. Undersigned military counsel's top priorities before this Court are as follows:

1) *United States v. Sanger*, ACM S32773 – The record of trial consists of two electronic volumes. The transcript is 141 pages. There are four prosecution exhibits, one defense exhibit, and four appellate exhibits. This case is on its eighth enlargement of time.
2) *United States v. Licea*, ACM 40602 - The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are 12 prosecution exhibits, five defense exhibits, 22 appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time.
3) *United States v. Torres Gonzalez*, ACM 24001 – This is the instant case.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters which has prevented him from completing an in-depth review of the record of trial. Undersigned military counsel has recently been detailed to *United States v. Cook*, a case which the C.A.A.F. granted for review on 29 January 2025. The grant brief and joint appendix are due for that case on 19 February 2025. Additionally, counsel has been hard at work on an Assignment of Errors in *United States v. Sanger*. That case has presented wide complexity, and counsel anticipates raising five errors before this Court. Given this, counsel has worked through

the previous two weekends on it. These efforts have been strained by medical issues that one of counsel's close family members has experienced which has required counsel to drive to the Walter Reed Medical Center two days a week for treatment during hours of operation. Accordingly, an enlargement of time is necessary for counsel to continue reviewing the record of trial and to advise appellant on potential errors.

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

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 6 February 2025.

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

10 February 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	)))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 24001 Panel No. 3

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 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 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

[redacted]
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 10 February 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, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	5 March 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his ninth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **14 April 2025**. This case was docketed with this Court on 12 December 2023.[1] This Court received the record of trial with the verbatim transcript and signed for it on 19 April 2024. Since the date of receipt and signature, 320 days have elapsed. On the date requested, 360 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order tion of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

GRANTED
10 MAR 2025

[1] From the date of docketing until the present, 449 days have elapsed. From the date of docketing until the date requested, 489 days will have elapsed.

The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecutions exhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to speedy appellate review as well as this request. Appellant agrees to the request. Additionally, counsel has been in communication with appellant concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege concerning the substance of those communications.

Undersigned counsel is currently assigned 18 cases; 7 cases are pending initial AOEs before this Court. Undersigned military counsel's top priorities before this Court are as follows:

1) *United States v. Torres Gonzalez*, ACM 24001 – This is the instant case.
2) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time.
3) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, 19 defense exhibits, 25 appellate exhibits, and one court exhibit. This case is on its sixth enlargement of time.

Through no fault of appellant, undersigned counsel has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial. During the previous enlargement of time, counsel was occupied with the completion of a grant brief before the Court of Appeals for the Armed Forces in *United States v. Cook*, which counsel submitted on 19 February 2025. Counsel also submitted a reply brief to this Court in *United States v. Hilton* on 24 February 2025 and an assignment of errors to this Court for *United States v. Sanger* on 28

February 2025. Additionally, counsel was in preparation for oral arguments before this Court in *United States v. Jenkins* which was scheduled to take place on 5 March 2025. These various priorities have prevented counsel from being able to dedicate the time necessary to work on this case. This case is now counsel's top priority, and counsel anticipates completing an assignment of errors without asking for additional enlargements of time. However, an enlargement of time is necessary at this time for counsel to fully review Appellant's case, advise on potential errors, and complete an assignment of errors.

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

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 5 March 2025.

Respectfully submitted,

[redacted]

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
United States Air Force
(240) 612-4770

7 March 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) LUIS A. TORRES GONZALEZ, USAF, *Appellant.*	))))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 24001 Panel No. 3 7 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.

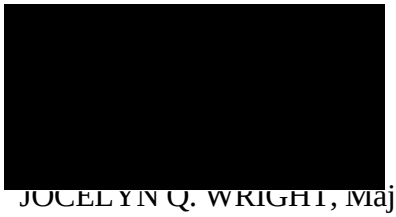
The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days 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 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 7 March 2025.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (TENTH)**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	7 April 2025

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

Pursuant to Rule 23.3(m)(2) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his tenth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 14 days, which will end on **28 April 2025**. This case was docketed with this Court on 12 December 2023.[1] This Court received the record of trial with the verbatim transcript and signed for it on 19 April 2024. Since the date of receipt and signature, 353 days have elapsed. On the date requested, 374 days will have elapsed.

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three confinement, reduction the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

GRANTED
10 APR 2025

[1] From the date of docketing until the present, 482 days have elapsed. From the date of docketing until the date requested, 503 days will have elapsed.

The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecutions exhibits, eight defense exhibits, and 25 appellate exhibits. Appellant is not currently in confinement. Appellant has been advised of his right to speedy appellate review as well as this request. Appellant agrees to the request. Additionally, counsel has been in communication with appellant concerning the status of the case. Counsel asserts attorney-client privilege concerning the substance of those communications.

Undersigned counsel is currently assigned to represent eighteen service members; seven cases are pending initial AOEs before this Court. Undersigned counsel's priorities are as follows:

1) *United States v. Adams*, ACM 22018 – The record of trial consists of four volumes and a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and seventeen appellate exhibits. This case is on its seventh enlargement of time. A brief is due to this Court on 16 April 2025.
2) *United States v. Torres Gonzalez*, ACM 24001 – This is the instant case.
3) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time. A brief is due to this Court on 18 April 2025.
4) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, nineteen defense exhibits, twenty-five appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time. A brief is due to this court on 21 April 2025.

Through no fault of appellant, undersigned counsel has been working on other assigned matters and has been unable to complete an assignment of errors in this case. Exceptional

circumstances warrant an enlargement of time because on 21 March 2025 this Court denied undersigned counsel's request for enlargement of time in *United States v. Copp*, ACM 24029 without explanation and without an opportunity to file a timely renewed request due to the 27 March 2025 filing deadline for an assignment of errors. This forced counsel to reorient all of his priorities to comply with the 27 March 2025 deadline. Prior to this, counsel's top priority was completion of an assignment of errors in this case, which counsel had anticipated completing before the current deadline. However, the denial in *United States v. Copp* prevented that. Additionally, counsel is balancing this case along with *United States v. Adams*. This Court previously denied a request for enlargement of time in that case beyond 254 days from receipt of the verbatim transcript. This Court more recently granted a one-week enlargement of time in that case, but Counsel has interpreted the previous denial to mean that *United States v. Adams* should be counsel's highest priority. The deadline for that case falls in close proximity to the instant case.

Counsel has fully reviewed the record of trial in this case, and has completed more than half of the expected work to be done on the initial draft of the assignment of errors. However, because of the close deadline that this case shares with *United States v. Adams*, counsel requires additionally time to complete the drafting of the brief, to route it through internal review, and ensure that the completed product fully reflects MSgt Torres Gonzalez interests on appeal. While counsel has been working diligently on this case, he has had to balance it with his work on *United States v. Cook* was had a reply brief due to the Court of Appeals for the Armed Forces on 2 April 2025, and also reply brief in *United States v. Sanger* which is due to this Court on 7 April 2025. Should this Court be inclined to deny this request for an enlargement of time, counsel requests a status conference. However, an enlargement of time is necessary for counsel to complete the important work on an assignment of errors.

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

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel
Appellate Defense Division
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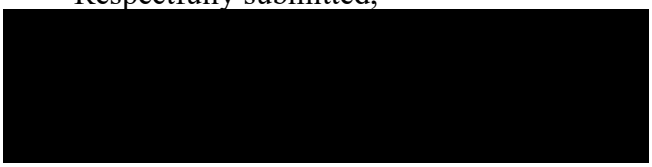
(240) 612-4770

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 7 April 2025.

Respectfully submitted,



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 3
Master Sergeant (E-7) **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	9 April 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 over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed more than two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities.

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

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 9 April 2025.

VANESSA BAIROS, Maj, USAF
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Government Trial and Appellate Operations Division
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(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 3
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	28 April 2025

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

I.

Whether the finding of guilty for use of delta-8-tetrahydrocannibinal was factually and legally insufficient because the regulation that MSgt Torres Gonzalez was convicted of violating was obsolete, and even if it was in effect the Government did not prove the required facts.

II.

Whether MSgt Torres Gonzalez was subjected to excessive delay in the processing of his court-martial after judgment where it took the Government eighty-one days to inform him of his right to appeal and 129 days to deliver a complete record of trial after docketing.

III.

Whether MSgt Torres Gonzalez's constitutional rights were violated when he was convicted of an offense with no requirement that the court-martial panel (the functional equivalent of a jury) vote unanimously that he was guilty.

IV.[1]

Whether the finding of guilty for unlawful use of cocaine was factually and legally insufficient.

[1] This Assignment of error (AOE) is raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

STATEMENT OF THE CASE

On 26 – 30 June 2023, a special court-martial convened at MacDill Air Force Base, Florida, convicted Master Sergeant (MSgt) Luis A. Torres Gonzalez, contrary to his pleas, of one charged specification of wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ); and one charged specification of failure to obey a lawful general order in violation of Article 92, UCMJ. (R. at 440). Appellant was sentenced by the members to three days of confinement, reduction to the paygrade of E-6, and a reprimand. (R. at 607). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action).

STATEMENT OF FACTS

MSgt Torres Gonzalez's life and nearly twenty-year military career took a turn for the worst after he volunteered for a deployment to Qatar. (R. at 384, 390.) During this deployment, he suffered substantial physical and mental trauma. This included witnessing the withdrawal of American military forces from Afghanistan and lingering memories of seeing the remains of service members being transported back. (R. at 364-65.) Moreover, MSgt Torres Gonzalez experienced a major back injury that left him in constant pain and unable to sleep. (R. at 202, 207, 225, 390.) MSgt Torres Gonzalez had three back surgeries to fuse his discs and implant titanium screws. (R. at 206, 480.) After the final procedure, MSgt Torres Gonzalez continued to experience difficulties and developed a lingering and constant pain in his left leg. (R. at 206.) Other complications from the surgery caused MSgt Torres Gonzalez to bleed through his stitches with discharge. (R. at 484.)

In addition to the chronic pain, MSgt Torres Gonzalez's difficulties with sleep were aggravated by sleep apnea, insomnia, and restless leg syndrome. (R. at 357.) Additionally, MSgt

Torres Gonzalez struggled with the experience of witnessing the withdrawal from Afghanistan. (R. at 364-65.) Friends and family noted a change in his demeanor for the worse. (R. at 384, 389.) The situation was further complicated when he was later taken off prescription pain medication by his medical providers. (R. at 207, 480-81.) He frequently had issues sleeping, often waking up screaming from nightmares. (R. at 509.) He reflected on the culmination of these circumstances during his unsworn statement:

> The thoughts of taking my life were really, really present after surgery because once again I was like what's the purpose of me even being here. I miss everything at my house. I can't function like I want to function. All these memories and nightmares, waking up sweating, waking up screaming, crying, I was done. I was done with it.

(R. at 486.)

MSgt Torres Gonzalez was later diagnosed with severe major depressive disorder, post-traumatic stress disorder, and anxiety. (App. Ex. XVIII at 1; R. at 479.) During sentencing, expert testimony demonstrated that post-traumatic stress disorder could have contributed to cognitive defects and a degradation in MSgt Torres Gonzalez's decision-making, judgment, and other functions. (R. at 559.) Expert testimony also established that decision-making functions were negatively impacted by chronic pain because "cognitive resources [would be] diverted towards processing pain," resulting in impulsive actions. (R. at 562-63.)

In the midst of his struggles, MSgt Torres Gonzalez was convinced by his wife to go to dinner at the Latin Grill along with his daughter and some friends on a Friday night. (R. at 487.) He initially resisted the invitation, but relented after his wife reminded him of the multiple times that he refused to go out because of his pain. (*Id.*) At the restaurant, he felt triggered by the crowd which made him uncomfortable. (R. at 487.) MSgt Torres Gonzalez felt his frustration and mental health problems culminate in that moment causing him to give up. (R. at 206.) He resolved to end his life. (R. at 340.) He went to the bathroom where he overhead a stranger making sniffing

sounds, which turned out to be made by his ingestion of a powder substance. (R. at 204.) MSgt Torres Gonzalez asked the stranger if he could try some and proceeded to snort the substance through a straw. (R. at 205.) MSgt Torres Gonzalez later reflected on the lack of judgment by stating that he had "been in pain for so long." (R. at 202.) MSgt Torres Gonzalez resorted to this in order to induce an overdose and end his life. (R. at 340.) While ingesting the substance, MSgt Torres Gonzalez did not consciously think about whether this was illegal. (R. at 488.) Instead, he was filled with shame that he had tried to commit suicide. (*Id.*)

The following Monday, MSgt Torres Gonzalez was ordered to take a random urinalysis. (R. at 489; Pros. Ex. 38.) The results of the urinalysis came back about a month later with a positive result for cocaine. (Pros. Ex. 7.) Following this, MSgt Torres Gonzalez chose to cooperate with Air Force investigators by submitting to an interview and admitting what happened. (R. at 161.) MSgt Torres Gonzalez was ordered to undergo a second urinalysis pursuant to *United States v. Bickel*, 30 M.J. 277 (C.M.A. 1990), which tested positive for tetrahydrocannabinol delta-8. (R. at 165.) Air Force investigators brought MSgt Torres Gonzalez in for another interview which he agreed to cooperate in. (R. at 166.) MSgt Torres Gonzalez speculated that the positive result came from orange gummies that a friend had given him to help him sleep. (R. at 177, 224.) MSgt Torres Gonzalez believed the gummies just contained cannabidiol (CBD) (R. at 354.), and did know know there was a connection between CBD and delta-8. (R. at 177.) No evidence was produced at trial showing that the bottle the gummies had any type of label explaining that they contained delta-8, that they were hemp derived, or that the ingredients were synthetically produced. (R. at 238.) MSgt Torres Gonzalez was unaware that they contained any type of tetrahydrocannabinol. (R. at 237.) Instead, he believed that the gummies were a "[m]elatonin type medicine" to help him to sleep. (R. at 491.)

At trial, MSgt Torres Gonzalez testified that his use of cocaine was "an attempt to take [his] life" and that he "wanted to overdose." (R. at 240.) He also explained that his pain management has been severely complicated after his medical providers took him off his medications. (R. at 341.) Multiple witnesses testified to MSgt Torres Gonzalez's exceptional military character. (R. at 360, 377, 385, 391.) His military records were exemplary and contain numerous awards and recognitions. (Pros. Ex. 46; Def. Ex. D.)

I.

The finding of guilty for use of delta-8-tetrahydrocannibinal was factually and legally insufficient because the regulation that MSgt Torres Gonzalez was convicted of violating was obsolete, and even if it was in effect the Government did not prove the required facts.

Additional Facts

On 16 August 2021, the Secretary of the Air Force ordered a guidance memorandum amending Department of the Air Force Manual (DAFMAN) 44-197, *Military Drug Reduction Program* (30 July 2019). (Pros. Ex. 44 at 1.) It explained, "This memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon publication of an Interim Change or rewrite of DAFMAN 44-197, whichever is earlier." (*Id.*) The memorandum included a revised version of paragraph 1.2.2.1 that prohibited the consumption of substances derived from hemp, defined as cannabis plants containing less than "0.3 percent delta-9-tetrahydrocannibinal (delta-9-THC) on a dry weight basis." (*Id.* at 2.) The paragraph referenced delta-8-tetrahydrocannibinal (delta-8-THC) and CBD as potentially derived from hemp. (*Id.*) However, it also clarified that the prohibition did not extend to instances where an accused had "no knowledge that the product was made from or derived from hemp, where such lack of knowledge is reasonable." (*Id.*)

Despite the fact that the guidance memorandum expired on 16 August 2022, the Government charged MSgt Torres Gonzalez with failing to obey it by "wrongfully using [delta-8-

THC]" "between on or about 1 September 2022 and on or about 14 September 2022." (Charge sheet.) The Government later amended the specification to specifically incorporate the guidance memorandum dated 16 August 2021 and referenced paragraph 1.2.2.1. (Charge sheet; R. at 7.) Additionally, the specification zeroed in exclusively on synthetic THC to the exclusion of any naturally occurring versions. (Charge sheet.) Excerpts of the guidance memorandum including the cover page and paragraph 1.2.2.1 were entered into the record as a prosecution exhibit. (Pros. Ex. 44.) However, the military judge did not take judicial notice of law or fact as to any of the memorandum's contents.

During the Government's case-in-chief, H.H. testified as an expert witness in forensic toxicology based on her employment at the Air Force Drug Testing Laboratory. (R. at 281, 283.) She explained that "hemp" and "marijuana" were both "cannabis sativa plants." (R. at 291.) H.H. identified delta-8-THC as a substance naturally occurring in both "hemp" and "marijuana." (R. at 291.) E.G., the supervisory detective for criminal investigations with the 6th Security Forces Squadron, also affirmed that delta-8-THC was an active component found in marijuana. (R. at 165.) H.H. later clarified that delta-8-THC could be synthetically made from CBD derived from a hemp plant. (R. at 314.) However, she also testified that CBD could be extracted from either "hemp" or "marijuana." (R. at 291.)

E.G. interviewed MSgt Torres Gonzalez after his positive urinalysis for delta-8-THC. (R. at 166.) After agreeing to cooperate in the investigation, MSgt Torres Gonzalez said that he had consumed gummies he believed contained CBD which came in bottle. (R. at 166.) Delta-8-THC was first brough up in the conversation by E.G. (R. at 177-178.) The bottle was never presented during the trial, and the Government offered no evidence of its labeling or the gummies themselves.

Standard of Review

Factual insufficiency is reviewed de novo with "appropriate deference given to the fact that the trial court saw and heard the witnesses and other evidence." Article 66, U.C.M.J., 10 U.S.C. § 866(b)(1)(ii)(I); *United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024). The degree of deference depends "on the nature of the evidence at issue." *Id.* Less deference is afforded where the reviewing court can assess challenged evidence such as "documents, videos, and other objective evidence just as well as the court-martial." *Id.* at 131. The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019).

Law & Analysis

Factual insufficiency review is triggered where an appellant "makes a specific showing of a deficiency in proof." 10 U.S.C. § 866(b)(1)(B)(i). Factual insufficiency is present where this Court "is clearly convinced that the findings of guilty [are] against the weight of the evidence." 10 U.S.C. § 866(b)(1)(B)(iii). To reach this determination, this Court may reweigh the evidence and make controverted findings of fact. 10 U.S.C. § 866(b)(1)(B)(ii). "[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is 'proof beyond a reasonable doubt.'" *Harvey*, 85 M.J. at 131.

To succeed in a prosecution under Article 92, U.C.M.J., 10 U.S.C. § 892(1), for violation of or failure to obey a lawful general regulation, the Government must prove the following:

(1)(a) That there was in effect a certain lawful general order or regulation;

(b) That the accused had a duty to obey it; and

(c) That the accused violated or failed to obey the order or regulation.

Manual for Courts-Martial, United States (2019 ed.) (*MCM*), pt. IV, ¶ 18.b.(1).

Appellant raises four distinct challenges to the factual and legal sufficiency of the evidence supporting the finding of guilty to Charge II and its specification. If this Court were to agree with any of them, there is no need to consider the other four.

A. The finding of guilty to Charge II and its specification was factually and legally insufficient

1. The Government failed to prove that DAFMAN 44-197, Guidance Memorandum was in effect at the time of alleged offense in the specification of Charge II.

The finding of guilty to the specification of Charge II is factually and legally insufficient because the guidance memorandum that MSgt Torres Gonzalez was alleged to have violated was obsolete at the time of the charged offense. The Government affirmatively chose to allege the guidance memorandum issued on 16 August 2021 as the basis for its theory of liability, going so far as to amend the specification to ensure it referenced paragraph 1.2.2.1. (Charge sheet; R. at 7.) The first element of Article 92(1) required that the Government prove the memorandum was in effect at the time of the alleged misconduct. The only evidence of the regulation presented by the Government was excerpts from the guidance memorandum, which were marked and admitted as Pros. Ex. 44. However, the exhibit was facially obsolete when the alleged offense took place. In particular, Pros. Ex. 44 plainly stated "This memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon publication of an Interim Change or rewrite of DAFMAN 44-197, whichever is earlier."

The date of the memorandum, as reflected in both Pros. Ex. 44 and the charging language of the specification, was 16 August 2021. This means that the guidance memorandum became void on 16 August 2022. However, the Government charged MSgt Torres Gonzalez with committing the alleged offense "on divers occasions between on or about 1 September 2022 and on or about 14 September 2022." The guidance memorandum was not in effect at that time. This

specific deficiency of proof renders the conviction for Charge II, Specification invalid. This case is directly analogous to *United States v. Henderson*, No. ACM 40419, 2025 CCA LEXIS 172 (A.F. Ct. Crim. App. Apr. 18, 2025). There, this Court set aside a finding of guilty to the violation of a general order because the government failed to prove beyond a reasonable doubt that the accused's misconduct occurred when the lawful general regulation concerned was in effect. *Id.*, 2025 CCA LEXIS at *22. Here, the failure to prove that the lawful general regulation was in effect at the time of the alleged violation is even starker. Just as in *Henderson*, the remedy is to set aside the finding of guilty to the order violation and to dismiss that charge with prejudice. *See id.* at *24-25.

If this Court agrees that the finding of guilty is invalid on this basis, there is no need to consider the next three subsections. This Court may instead proceed directly to "B," which discusses the remedy as to the sentence.

2. The Government failed to prove that MSgt Torres Gonzalez consumed synthetic delta-8-THC as required by the charging language.

The Government specifically charged MSgt Torres Gonzalez with violating DAFMAN 44-197 by using *synthetic* delta-8-THC. By narrowing the specification to synthetic variants of the substance, the Government committed itself to having to prove that the delta-8-THC identified in MSgt Torres Gonzalez's urinalysis was synthetic rather than natural. Importantly, the prohibition in paragraph 1.2.2.1 of the guidance memorandum was not limited to synthetic products derived from hemp. (Pros. Ex. 44 at 2.) The Government did not need to charge the use of synthetic substances to specify an offense under the regulation. However, the Government's decision to specifically charge synthetic delta-8-THC bound it to proving that theory, and a finding by substitutions and exceptions is unavailable on appellate review. *United States v. English*, 79 M.J. 116, 120 (C.A.A.F. 2019). This is analogous to *English*, where the Government charged a

particular type of force used in the commission of a sexual assault, an allegation not required to be included in the specification. *Id.* at 120. The C.A.A.F. held that the Government election to unnecessarily charge the type of force made it a requirement "to prove the facts as alleged." *Id.* at 120. So too here, the Government election to charge synthetic delta-8-THC set forth a factual requirement that the prosecution had to prove beyond a reasonable doubt, but which the record does not support.

The court-martial received no evidence that the substance that MSgt Torres Gonzalez tested positive for was synthetic, rather than natural. To the contrary, the Government's expert witness highlighted this ambiguity. H.H. testified that delta-8-THC was naturally occurring in both "hemp" and "marijuana." (R. at 290-91.) H.H. could only offer speculation as to whether the substance that MSgt Torres Gonzalez tested positive for was synthetic or natural. At most, H.H. was able to explain that delta-8-THC was "commonly" and "usually" made from CBD. (R. at 315.) H.H. provided no other details concerning how prevalent synthetic products might be, or why the description of the gummies consumed by MSgt Torres Gonzalez was, consistent with using synthetic ingredients rather than natural. H.H. did not elaborate on how synthetic delta-8-THC was created, or how that process was indicative of MSgt Torres Gonzalez using a synthetic version. Nor did H.H. renounce her earlier testimony that delta-8-THC was also naturally occurring. The Government presented no evidence to demonstrate beyond a reasonable doubt that MSgt Torres Gonzalez's urinalysis results bore any type of indications or marker which would demonstrate the presence of a synthetic version of delta-8-THC. Without firm evidence, the Government's case rested on speculation and naked probabilities that did not meet the standard of proof: beyond a reasonable doubt. *Victor v. Neb.*, 511 U.S. 1, 5 (1994) (holding that probability of guilt must be demonstrated as strong enough to surpass reasonable doubt).

The distinction between synthetic and natural forms of the delta-8-THC was a critically important matter of proof that the Government had to establish under its own charging decision because the two categories were not interchangeable. *United States v. Owens*, 48 C.M.R. 636, 643 (C.M.A. 1974) ("a critical inquiry in any case involving possession of tetrahydrocannabinol would have to be whether the substance possessed was natural or was a synthetic."). The equivocation of natural and synthetic variants of a prohibited substance invites error. *United States v. Ross*, 719 F.2d 615, 618 (2d Cir. 1983) (reversing conviction where defendant was charged with possessing naturally derived cocaine, but evidence adduced at trial only demonstrated that it was synthetic); *United States v. Tyhurst*, 28 M.J. 671, 674 (A.F.C.M.R. 1989) (holding that Government bears burden of proving relationship between synthetic derivatives of natural substances such that they are interchangeable to succeed on prosecution under the former Article 112a which did not incorporate synthetic variations of naturally occurring substances).

3. The Government did not prove MSgt Torres Gonzalez failed to obey the guidance memorandum because it did not prove he consumed a hemp-derived product.

The Government bore the burden of proving that MSgt Torres Gonzalez's positive urinalysis for delta-8-THC was the result of a substance derived from hemp. "To constitute an offense cognizable under the regulation all facts contemplated by its language must be established." *United States v. Verdi*, 5 M.J. 330, 335 (C.M.A. 1978). The failure to prove all facts necessary to establish an offense under the general regulation necessitates acquittal. *Id.* The guidance memorandum that the Government used to charge MSgt Torres Gonzalez only prohibited the use of products made from hemp, defined under paragraph 1.2.2.1 as a cannabis plant containing less than "0.3 percent delta-9-tetrahydrocannibinal (delta-9-THC) on a dry weight basis." (Pros. Ex. 44.) This means the use of delta-8 could only be prosecuted under the guidance memorandum if it originated from a cannabis plant meeting the definition of hemp. The

Government had to prove beyond a reasonable doubt that the offending substance was derived from a cannabis plant having dry weight concentration of delta-9 measuring less than 0.3. The Government presented no evidence to establish that.

H.H.'s testimony only obscured the notion that the delta-8-THC was from hemp. H.H. explained that delta-8-THC occurred naturally in both "hemp" and "marijuana." (R. at 291.) However, no follow-up evidence was given demonstrating that MSgt Torres Gonzalez tested positive from a hemp-based, rather than marijuana-based, product. Nor could the hole in the prosecution's case have been filled with reference to CBD. Although H.H. testified that delta-8-THC could be synthesized from CBD, she also clarified that CBD could be harvested from either "hemp" or "marijuana." (R. at 291.) This left open the wide possibility that even if the substance was synthesized from CBD, it could have been derived from a plant that did not meet the definition of hemp as required by the guidance memorandum. Importantly, if the plant had a dry weight concentration of delta-9 by even a fraction of a percentage over 0.3, it would not be prohibited under the guidance memorandum. But the Government did not present any evidence to prove the composition of the plant source.

4. The Government did not prove beyond a reasonable doubt that MSgt Torres Gonzalez had knowledge of using a product derived from hemp or an unreasonable lack of knowledge of using a product derived from hemp.

Paragraph 1.2.2.1 did not criminalize instances where the accused had "no knowledge that the product was made from or derived from hemp, where such lack of knowledge [was] reasonable." (Pros. Ex. 44 at 2.) The Government was required to prove beyond a reasonable doubt that this defense did not apply. Put differently, the Government had to prove that MSgt Torres Gonzalez knew that he consumed a product made from hemp or that his lack of such knowledge was unreasonable. The Government failed to meet its burden of proof on this matter.

The substance that resulted in the positive result for delta-8-THC was never tested. No packaging for the gummies was produced at trial to show any type of label that attested to the delta-8-THC's origin as hemp derived. Nor was any witness testimony presented to suggest any likelihood that MSgt Torres Gonzalez would have been led to believe this or that his lack of belief was unreasaonable. The Government failed to meet its burden of proof on this important fact whose proof was required to establish a violation of the guidance memorandum.

B. Meaningful relief for MSgt Torres Gonzalez should include setting aside the adjudged reduction in rank.

The myriad factual insufficiency issues related to the specification under Charge II call for the finding of guilty to that charge and its specification to be set aside and dismissed with prejudice. This would effectively split MSgt Torres Gonzalez's punitive liability in half and warrant sentence reassessment as to the single remaining specification by setting aside his reduction in rank.

Whether to reassess a sentence or order a rehearing depends on the following non-exclusive factors: (1) whether there are dramatic changes in the penalty landscape and exposure; (2) whether an appellant chose sentencing by members or a military judge alone; (3) whether the nature of the remaining offenses captures the gravamen of criminal conduct; (4) whether significant or aggravating circumstances addressed at the court-martial remain admissible and relevant to the remaining offenses; and (5) whether the remaining offenses are of the type that judges of the Courts of Criminal Appeals should have the experience and familiarity to reliably determine what sentence would have been imposed at trial. *United States v. Winckelmann*, 73 M.J. 11, 14-15 (C.A.A.F 2013).

In this case, the four factors favor reassessment which can be meaningfully achieved by setting aside the reduction in rank. First, the penalty landscape will not dramatically change as a result of having Charge II and its specification dismissed. While this reduces MSgt Gonzalez's

convictions to just a single specification, the maximum penalty for the remaining offense is still the same because the two charges were referred to a special court-martial. This forum eliminates any disparity in the authorized maximum punishments for the offenses of unlawful use of cocaine in violation of Article 112a and violation of a general lawful order under Article 91(1). Second, while MSgt Torres Gonzalez was sentenced by members, which tends to favor remand, other factors and considerations weigh in favor of reassessment. Importantly, the gravamen of the criminal conduct will change by virtue of the number of convictions being cut in half, however the strongly mitigating evidence presented during the findings and sentencing phases is undisturbed and readily accessible from the record. Finally, the remaining offense is of the type that this Court should have experience and familiarity with, which can be reliably analyzed along with the mitigating evidence.

A reassessed sentence may be no greater than a sentence that would have been imposed had there been no error. *United States v. Moffeit*, 63 M.J. 40, 41 (C.A.A.F. 2006). Additionally, reassessment depends on what the magnitude the sentence would have been had the error not taken place. *United States v. Doss*, 57 M.J. 182, 185 (C.A.A.F. 2002). "Because reassessment is conducted in response to a sentencing error, the analysis must therefore examine the proceeding that caused the error." *United States v. Williams*, 84 M.J. 362, 367 (C.A.A.F. 2024).

In this case, the erroneous factually insufficient finding of guilty to Charge II and its specification resulted in MSgt Torres Gonzalez being exposed to twice the number of convictions for which he should have been sentenced. Of the remaining specification, the evidence adduced at trial was substantially mitigating. MSgt Torres Gonzalez was an exemplary Airman who achieved an outstanding record with numerous accolades. (Pros. Ex. 46; Def. Ex. D.) His single use of cocaine was driven by extreme pain resulting from his numerous deployments and failed

back surgery which compromised his judgment. This strongly undermined the notion that MSgt Torres Gonzalez was criminally inclined. Moreover, he presented strong evidence of military character and a high potential for rehabilitation. Presumably, the panel took these into consideration when delivering what is admittedly a light sentence. However, without the delta-8-THC conviction, the sentence should have been of a magnitude lower. Meaningful relief for the factually insufficient conviction should include setting aside the reduction in rank.

II.

Whether MSgt Torres Gonzalez was subjected to excessive delay in the processing of his court-martial after judgment where it took the Government eighty-one days to inform him of his right to appeal and 129 days to deliver a complete record of trial after docketing.

Additional Facts

MSgt Torres Gonzalez was sentenced on 30 June 2023 (R. at 607.) It was not until 19 September 2023 that the Government provided MSgt Torres Gonzales with a partial record of trial along with a letter advising him of his right to file for appeal before this Court within ninety days pursuant to Article 66, U.C.M.J., 10 U.S.C. § 866(c)(1)(A). (Record of Trial, Vol. 1, ninety-day letter.) The time between sentencing and the provision of the notice of right to appeal letter was eighty-one days. The initial copy of the record of trial did not include a verbatim transcript. On 12 December 2023, this Court docketed this case following MSgt Torres Gonzalez's filing for direct appeal. On 19 April 2024, the Government provided a complete record of trial with a verbatim transcript. From the date of docketing until provision of the complete record of trial, 129 days had elapsed.

Standard of Review

This Court reviews claims challenging the due process right to a speedy post-trial review and appeal de novo. *United States v. Anderson*, 82 M.J. 82, 85 (C.A.A.F. 2022) (citing *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006)).

Law & Analysis

Under Article 66(d)(2), this Court may provide appropriate relief where there is "excessive delay in the processing of the court-martial after the judgment was entered into the record." 10 U.S.C. § 866(d)(2). In this case, MSgt Torres Gonzalez was subject to excessive delay in two instances. The first of these was the eighty-one days that had elapsed between sentencing and the Government's provision of the written notice of right to appeal. The second is 129 days that had taken place before the Government provided this Court a complete record of trial along with the verbatim transcript.[2] Collectively, this amounts to 210 days of total delay entirely attributable to the Government. This Court should conclude that the excessive and unwarranted nature of these delays calls for appropriate relief.

In *United States v. Valentin-Andino*, ___ M.J. ___, 2025 CAAF LEXIS 248, at *10 n.4 (C.A.A.F. Mar. 31, 2025), the United States Court of Appeals for the Armed Forces (C.A.A.F.) identified Article 66(d)(2) as the sole governing provision of the U.C.M.J. for addressing whether relief is warranted due to excessive post-trial delay. "Appropriate relief" is available under Article 66(d)(2) merely upon a demonstration of excessive delay, provided that the relief is "suitable under the facts and circumstances of the case." *Valentin-Andino*, 2025 C.A.A.F. LEXIS 248, at *2. The

[2] This 210-day calculation does not include the period between when the ninety-day letter was sent to MSgt Torres Gonzalez and the filing of his notice of appeal. The 210-day delay is the sum of the two periods of time that the Government spent producing the record of trial and which was exclusively within the Government's control.

plain text of Article 66(d)(2) does not require a showing of prejudice. *United States v. Atencio*, No. ACM S32783, 2024 CCA LEXIS 543, at *6 (A.F. Ct. Crim. App. Dec. 20, 2024).

In this case, the excessive delay is demonstrable and apparent from the sheer timeline involved in the Government's production of the notice of right to appeal letter and the partial record of trial. Both of these matters were solely in the control of the Government and left MSgt Torres Gonzalez unable to exercise his right to appellate review under Article 66(b)(1)(A). Even accepting, for the sake of argument, that MSgt Torres Gonzalez did not immediately file his notice of appeal until some time after the Government sent the letter notifying him of his right to direct appeal, this does not mitigate the almost year-long period that had elapsed from when his case became eligible for direct appeal before the Government complied with the notice requirement under Article 65(c)(1) that triggered the window for MSgt Torres Gonzalez to appeal to this Court. The delay in this case was further aggravated by the 133 days that elapsed before the Government provided the still-incomplete record of trial. Both of these timelines are sufficient to demonstrate excessive delay under Article 66(d)(2) and warrant appropriate relief.

Per the standard announced in *Valentin-Andino*, relief is suitable under the facts and circumstances of this case. *Valentin-Andino*, 2025 C.A.A.F. LEXIS 248, at *2. This is informed by the non-exclusive factors outlined in *United States v. Gay*, 74 M.J. 736 (A.F. Ct. Crim. App. 2015). *See Atencio*, 2024 CCA LEXIS 543, at *6 (applying the *Gay* factors in the context of Article 66(d)(2)). These factors may include the following:

> 1. How long did the delay exceed the standards set forth in *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006)?
>
> 2. What reasons, if any, has the government set forth for the delay?
>
> 3. Is there some evidence of harm (either to the appellant or institutionally) caused by the delay?

> 4. Has the delay lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline?
>
> 5. Is there any evidence of institutional neglect concerning timely post-trial processing, either across the service or at a particular installation?
>
> 6. Given the passage of time, can this court provide meaningful relief in this particular situation?

Gay, 74 M.J. at 744. In this case, the following considerations demonstrate that the delays at issue were excessive and that relief is suitable under the facts and circumstances of this case.

A. The delays collectively exceed the standards arising from *Moreno*, 63 M.J. at 129.

The delays created by the Government collectively exceed the standards in *Moreno* and are presumptively unreasonable. In that case, the C.A.A.F. recognized a presumption of unreasonable delay in post-trial processing where convening authority action was not taken within 120 days, and the case was not docketed with this court within 30 days. *Id.* at 142. This Court has interpreted this to mean that delays exceeding 150 days total are presumptively unreasonable. *United States v. Livak*, 80 M.J. 631 (A.F. Ct. Crim. App. 2020) (finding a "150-day threshold appropriately protects an appellant's due process right to timely post-trial and appellate review and is consistent with our superior court's holding in *Moreno*"). In this case, the Government's first delay in providing the notice of right to direct appeal letter was eighty-one days. Similarly, the Government's provision of the complete record of trial was 129 days. Collectively, both of these delays – which do not include the period of time between the notice of right to appeal letter and MSgt Torres Gonzalez filing his case with this Court – add up to 210 days which vastly exceeds the *Moreno* standard and demonstrates that the delays were excessive.

Importantly, the excessive nature of the delays is cognizable under Article 66(d)(2) in spite of this case not falling under automatic review. In *United States v. Boren*, No. ACM 40296 (f rev),

2025 CCA LEXIS 103 (A.F. Ct. Crim. App. Mar. 19, 2025), this Court limited *Livak*'s application to cases filed under Article 66(b)(1)(A). This is because in such cases the "appellant is now in the diver's seat in determining whether post-conviction review is concluded." *Id*. at *47. However, the two delays at issue in this case are distinguishable because they were both occasioned by matters entirely within the Government's control. The first of these was the provision of the notice of right to appeal letter that triggered MSgt Torres Gonzalez's timeline to file for appeal with this Court, the second being the 129-days that it took for the Government to provide the record of trial. In both instances, MSgt Torres Gonzalez was not the one controlling the process; rather, it was the Government. The landscape of post-trial delay was also addressed by this Court in *United States v. Gray*, No. ACM 40648, 2025 CCA LEXIS 122 (A.F. Ct. Crim. App. Mar. 24, 2025). This Court recognized that "it is possible that an appellant could demonstrate a case-specific facially unreasonable delay." *Id.* at *17. This case certainly features that because of the excessive delays attributable entirely to the Government.

B. No justification exists for the excessive delays.

The excessive delays are not justified by anything in the record of trial. The initial assembly of the record of trial with the summarized transcript appears to be the product of normal case processing. The record of trial contains no commentary on the period of time between when the court reporter chronology ends and the notice of right to appeal letter was finally sent. Meanwhile, the still uncertified verbatim transcript contains no commentary whatsoever for why it took so long. The relatively small size of the record of trial should have enabled the Government to assemble it much more expediently. *See Atencio*, 2024 CCA LEXIS 543, at *9 (holding that where the record of trial was only three volumes and the transcript was only 120 pages, "It stretched credulity to believe such an in inordinate amount of time was necessary to transcribe and

assemble the record of trial."); *United States v. Hennessy*, No. ACM , 2024 CCA LEXIS 343, at *36 (A.F. Ct. Crim. App. August 20, 2024) (finding that seven months to transcribe 1,169 pages was "simply too long to be reasonable absent any attending extraordinary circumstances.").

C. The delay resulted in harm to both MSgt Torres Gonzalez and the military justice institution.

The excessive delay has harmed MSgt Torres Gonzalez by impeding his ability to exercise his right to appellate review. The Government accountable delays have resulted in MSgt Torres Gonzalez having to wait a total of 494 days. While the text of Article 66(d)(2) does not require a showing of prejudice, the C.A.A.F. has long recognized the "impairment of a convicted person's grounds for appeal" as a form of prejudice that violates the principles of due process. Such is the case here where MSgt Torres Gonzalez's ability to exercise his appellate rights has been severely inhibited by the delays. "[D]elay in the administrative handling and forwarding of the record of trial and related documents to an appellate court [] is the least defensible of all and worthy of the least patience." *United States v. Dunbar*, 31 M.J. 70, 73 (C.M.A. 1990). The reason this Court should have little patience with the Government is because "this stage involves no discretion or judgment; and, unlike an appellate court's consideration of an appeal, this stage involves no complex legal or factual issues or weighing of policy considerations." *Id*. Like the appellant in *United States v. Turpiano*, MSgt Torres Gonzalez has been "impeded in his ability to exercise his post-trial rights because of the actions, or more aptly delayed actions, of the Government." No. ACM 38873 (f rev), 2019 CCA LEXIS 367, at *19 (A.F. Ct. Crim. App. Sep. 10, 2019).

The circumstances of this case also show institutional neglect from the Government that harms the standing of the military justice system. The general lack of urgency in the Government's post-trial processing of MSgt Torres Gonzalez's cases raises concerns that this Court has previously seen as problematic. *Atencio*, 2024 CCA LEXIS 543, *9. In *Valentin-Andino*, this

Court recognized systemic problems indicating institutional neglect as evidenced by the high volume of cases that had to be remanded because of incomplete records of trial. 2025 CAAF LEXIS 248, at *4. The Government's failure to timely produce a complete record of trial that includes a certified verbatim transcript is indicative of this continued institutional problem. Accordingly, the harm suffered by both MSgt Torres Gonzalez as an individual and the institutional harm underpins the excessive delay shown in this case.

D. The delay has not lessened the punitive effect of MSgt Torres Gonzalez's reduction in rank, and relief can be granted while still upholding the dual goals of justice and good order and discipline.

MSgt Torres Gonzalez's reduction in rank has continued to carry the same punitive impact that it did when the punishment was first adjudged. This is distinct from forms of punishment which expire after a certain duration, such as confinement. Accordingly, the opportunity for MSgt Torres Gonzalez to receive relief is still ripe. Additionally, appropriate relief in the form of setting aside the forfeitures would still allow for justice and good order and discipline to be maintained. This is because MSgt Torres Gonzalez will continue to bear convictions any offenses not set aside. Moreover, he served his period of confinement. This is sufficient to maintain the dual goals of justice and good order and discipline, especially in light of the tremendous mitigating evidence that was produced at trial. Despite the passage of time, this Court can still give meaningful and appropriate relief to MSgt Torres Gonzalez by setting aside the reduction in rank.

III.

MSgt Torres Gonzalez's constitutional rights were violated when he was convicted of an offense with no requirement that the court-martial panel (the functional equivalent of a jury) vote unanimously that he is guilty.

Additional Facts

The military judge instructed the members, "A concurrence of at least three-fourths of the members present when the vote is taken is required for any finding of guilt. Since we have four members, that means three members must concur on any finding of guilty." (R. at 436.) Also, "If you have at least three members of guilty on any offense, then that will result in a finding of guilty for that offense." (*Id.*) The announcement of findings and the findings worksheet leave no way of knowing whether the finding of guilty to any offense was unanimous or by 3-1 vote.

Standard of Review

The standard of review for a question of constitutional law is de novo. *United States v. Busch*, 75 M.J. 87, 91 (C.A.A.F. 2016).

Law & Analysis

In *United States v. Anderson*, the Court of Appeals for the Armed Forces held that non-unanimous findings of guilty do not violate a court-martial accused's constitutional rights. *United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct. 1003 (2024). MSgt Torres Gonzalez acknowledges that, absent intervening Court of Appeals for the Armed Forces or Supreme Court case law, this Court is bound by the *Anderson* opinion. Nevertheless, MSgt Torres Gonzalez maintains that *Anderson* was wrongly decided and expressly preserves this issue for further appellate review. This Court should remedy the violation of MSgt Torres Gonzalez's constitutional right to be found guilty only upon a unanimous verdict by reversing the findings of guilty as to all charges and specifications, and the sentence while authorizing a rehearing at which

MSgt Torres Gonzalez may be found guilty only upon a unanimous vote of the members.

Respectfully submitted,

[redacted]

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APPENDIX

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matters:

IV.

The finding of guilty for use of cocaine was factually and legally insufficient.

Standard of Review

Legal sufficiency is reviewed de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002) (citation omitted). Factual insufficiency is reviewed de novo with "appropriate deference given to the fact that the trial court saw and heard the witnesses and other evidence." Article 66, U.C.M.J., 10 U.S.C. § 866(b)(1)(ii)(I); *Harvey*, 85 M.J. at 130.

Law & Analysis

Factual insufficiency review is triggered where an appellant "makes a specific showing of a deficiency in proof." 10 U.S.C. § 866(b)(1)(B)(i). Factual insufficiency is present where this Court "is clearly convinced that the findings of guilty [are] against the weight of the evidence." 10 U.S.C. § 866(b)(1)(B)(iii). To reach this determination, this Court may reweigh the evidence and make controverted findings of fact. 10 U.S.C. § 866(b)(1)(B)(ii). "[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is 'proof beyond a reasonable doubt.'" *Harvey*, 85 M.J. at 131. The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *King*, 78 M.J. at 221.

MSgt Torres Gonzalez's conviction for using cocaine is factually and legally insufficient because of the extreme physical and mental health conditions that he faced at the time of the offense. These conditions are discussed throughout the main brief. These issues compromised

MSgt Torres Gonzalez's judgment at the time he snorted the white powder substance, undermining the notion that he purposely engaged in criminal behavior by knowingly consuming cocaine. MSgt Torres Gonzalez respectfully requests that this Court set aside the finding of guilty for unlawful use of cocaine and the sentence.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 28 April 2025.

Respectfully submitted,

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 24001**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
Luis A. TORRES GONZALEZ	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 6th day of May, 2025,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 3 and referred to Panel 2 for appellate review.

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION TO ATTACH**
v.	)	Before Panel No. 3
Master Sergeant (E-6), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	28 April 2025

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

Pursuant to Rules 23 and 23.3(b) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves to attach the Appendix to this motion to Appellant's Record of Trial. The Appendix may be attached consistent with *United States v. Jessie*, because its consideration is necessary to "resolv[e] issues raised by materials in the record." 79 M.J. 437, 444 (C.A.A.F. 2020); *accord United States v. Willman*, 81 M.J. 355, 358 (C.A.A.F. 2021) ("In addition to permitting consideration of any materials contained in the 'entire record,' our precedents also authorize the CCAs to supplement the record to decide any issues that are raised, but not fully resolved, by evidence in the record."). The Appendix totals one (1) pages in length and consists of the following:

Declaration of MSgt Luis A. Torres Gonzalez: A Declaration made under penalty of perjury and signed by MSgt Torres Gonzalez. This declaration is relevant and necessary in resolving the second assignments of error MSgt Torres Gonzalez has raised before this Court. In determining whether appropriate relief is warranted for excessive delays in post-trial processing, this Court has held that harm suffered by the appellant is a relevant factor. *United States v. Gay*, 74 M.J. 736, 744 (A.F. Ct. Crim App. 2015). In his Declaration, MSgt Torres Gonzalez outlines [illegible] he has suffered as a result in the Government's delay providing notice of his right to

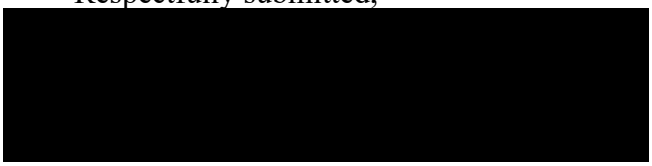
U.S. AIR FORCE COURT OF CRIMINAL APPEALS

GRANTED
6 MAY 2025

appeal and the complete record of trial. Consideration of the matters described above is necessary for this Court to resolve a matter already raised in the record itself. That is, whether MSgt Torres Gonzalez suffered harm as a result of the Government created delays in this case.

WHEREFORE, Appellant respectfully requests that this Honorable 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 Appellate Government Division on 28 April 2025.

Respectfully submitted,

[redacted]

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 3
Master Sergeant (E-7) LUIS A. TORRES GONZALEZ United States Air Force *Appellant.*	)	No. ACM 24001 28 May 2025

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

ISSUES PRESENTED

I.

WHETHER THE FINDING OF GUILTY FOR USE OF DELTA-8-TETRAHYDROCANNIBAL WAS FACTUALLY AND LEGALLY INSUFFICIENT BECAUSE THE REGULATION THAT [APPELLANT] WAS CONVICTED OF VIOLATING WAS OBSOLETE, AND EVEN IF IT WAS IN EFFECT THE GOVERNMENT DID NOT PROVE THE REQUIRED FACTS.

II.

WHETHER [APPELLANT] WAS SUBJECTED TO EXCESSIVE DELAY IN THE PROCESSING OF HIS COURT-MARTIAL AFTER JUDGMENT WHERE IT TOOK THE GOVERNMENT EIGHTY-ONE DAYS TO INFORM HIM OF HIS RIGHT TO APPEAL AND 129 DAYS TO DELIVER A COMPLETE RECORD OF TRIAL AFTER DOCKETING.

III.

WHETHER [APPELLANT'S] CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITH NO REQUIREMENT THAT THE COURT-MARTIAL PANEL (THE FUNCTIONAL EQUIVALENT OF A JURY) VOTE UNANIMOUSLY THAT HE WAS GUILTY.

IV.[1]

WHETHER THE FINDING OF GUILTY FOR UNLAWFUL USE OF COCAINE WAS FACTUALLY AND LEGALLY INSUFFICIENT.

STATEMENT OF CASE

On 30 June 2023, a special court-martial composed of officer members found Appellant guilty, contrary to his pleas, of one charge and one specification of wrongful use of cocaine in violation of Article 112A, Uniform Code of Military Justice (UCMJ) and one charge and one specification of failure to obey a lawful general regulation in violation of Article 92, UCMJ. (*Entry of Judgment*, 17 July 2023, ROT, Vol. 1.)[2] The officer panel sentenced Appellant to confinement for three (3) days, reduction to the grade of E-6, and a reprimand. (Id.) The convening authority took no action on the findings and sentence and denied Appellant's request for deferment of the adjudged forfeitures. (*Convening Authority Decision on Action*, 7 July 2023, ROT, Vol. 1.)

STATEMENT OF FACTS

Relevant facts are provided for each issue below.

[1] Issue IV is raised in accordance with United States v. Grostefon, 12 M.J. 431 (1982).
[2] Unless otherwise noted, all references to the UCMJ, Rules for Courts-Martial (R.C.M.), and Military Rules of Evidence (Mil. R. Evid.) are to the versions published in the Manual for Courts-Martial, United States (2019 ed.) (MCM).

ARGUMENT

I.

THE FINDING OF GUILTY FOR USE OF DELTA-8-TETRAHYDROCANNIBAL WAS FACTUALLY AND LEGALLY INSUFFICIENT.

Additional Facts

Following a positive urinalysis for cocaine, Appellant provided a Bickel[3] test. (R. at 165.) Appellant's Bickel test came back positive for Delta-8 tetrahydrocannabinol (Delta-8 THC). (R. at 165.) When investigators interviewed him, Appellant admitted to ingesting gummies for pain management that he believed contained cannabidiol (CBD). (R. at 166.) He also admitted to knowing that Delta-8 THC was a prohibited substance in the military. (R. at 167.)

For this misconduct Appellant was charged with the below in violation of Article 92, UCMJ:

> In that (Appellant), 6th Aircraft Maintenance Squadron, MacDill Air Force Base, Florida, did, within the continental United States, on divers occasions between on or about 1 September 2022 and 14 September 2022, fail to obey a lawful general regulation, which was his duty to obey, to wit: Department of the 8 Air Force Manual 44-197, Guidance Memorandum, dated 16 August 2021, paragraph 1.2.2.1, by wrongfully using Delta-8 tetrahydrocannabinol, a synthetic tetrahydrocannabinol.

(*Charge Sheet*, 27 February 2023, ROT, Vol. 1.)

To prove this charge and specification, trial counsel introduced paperwork from Appellant's Bickel test, the positive drug testing report, Appellant's urine bottle, and excerpts of

[3] *See* United States v. Bickel, 30 M.J. 277, 288 (C.M.A. 1990) (holding that the testing of servicemember's urine for drugs pursuant to an inspection is constitutionally valid and that a subsequent test is a continuation of the original inspection).

DAFMAN 44-197, Guidance Memorandum, dated 16 August 2021. (Pros. Ex. 19, 24-36, 44.) The guidance memorandum updated the prohibition on the use and ingestion of "hemp products, including but not limited to cannabidiol." (Pros. Ex. 44.) The memorandum stated that it "becomes void after one year has elapsed from the date of this memorandum, or upon publication of an Interim Change or rewrite of DAFMAN 44-197, whichever is earlier. (Id.)

Standard of Review

The standard of review for factual and legal sufficiency is de novo. United States v. McAlhaney, 83 M.J. 164, 166 (C.A.A.F. 2023) (citing United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law and Analysis

A CCA "may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with [Article 66(d)(1)(B)]." 10 U.S.C. § 866(d)(1)(A).

The test for legal sufficiency is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019). (internal citations omitted). This test does not require a court to ask whether it believes the evidence established guilt beyond a reasonable doubt, but rather whether any rational factfinder could do so. United States v. Acevedo, 77 M.J. 185, 187 (C.A.A.F. 2017). The term reasonable doubt, however, does not mean that the evidence must be free from conflict. United States v. Wheeler, 76 M.J. 564, 568 (A.F. Ct. Crim. App. 2017), aff'd, 77 M.J. 289 (C.A.A.F. 2018). In resolving questions of legal sufficiency, the Court is bound to draw every reasonable inference from the evidence of record in favor of the prosecution. United States v. Plant, 74 M.J. 297, 301 (C.A.A.F. 2015). The test for legal sufficiency "gives full play to the responsibility of the trier of

fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." United States v. Oliver, 70 M.J. 64, 68 (C.A.A.F. 2011) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1973)). As a result, the standard for legal sufficiency involves a very low threshold to sustain a conviction. King, 78 M.J. at 221.

If all offenses occurred on or after 1 January 2021,[4] factual sufficiency review is triggered only if an appellant (1) asserts it as an assignment of error, and (2) shows "a specific deficiency in proof." 10 U.S.C. § 866(d)(1)(B)(i); United States v. Harvey, 2024 CAAF LEXIS 502, *5 (C.A.A.F. 6 September 2024).

The factual sufficiency standard in the revised Article 66 has two requirements which must be met for a Court of Criminal Appeals (CCA) to be clearly convinced that the finding of guilty was against the weight of the evidence. "First, the CCA must decide that the evidence, *as the CCA has weighed it*, does not prove that the appellant is guilty beyond a reasonable doubt. Second, the CCA must be clearly convinced of the correctness of this decision." United States v. Harvey, 85 M.J. 127, 132 (C.A.A.F. 2024) (emphasis in original).

In its review this Court must also determine if an appellant has made a specific showing of a deficiency in proof. Article 66(d)(1)(B)(i). If an appellant makes this showing, this Court should weigh the evidence in a deferential manner to the result at trial; and if this Court is clearly convinced that, when weighed, the evidence (including the testimony) does not support a conviction, it may set it aside. Harvey, 85 M.J. at 127, 129. "The quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is 'proof beyond a reasonable doubt,' the same as the quantum of proof necessary to find an accused guilty at trial." Id. at 131.

[4] National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12.

To prove Appellant failed to obey a lawful general regulation, the government needed to prove that (1) that there was in effect a certain lawful general regulation, to wit: Department of the Air Force Manual 44-197, Guidance Memorandum, dated 16 August 2021, paragraph 1.2.2.1; (2) that Appellant had a duty to obey such regulation; and (3) that on divers occasions between on or about 1 September 2022 and on or about 14 September 2022, within the continental United States, Appellant failed to obey this lawful general regulation by wrongfully using Delta-8 tetrahydrocannabinol, a synthetic tetrahydrocannabinol. (R. at 404.)

Here the government agrees that trial counsel failed to offer proof that Department of the Air Force Manual 44-197, Guidance Memorandum, dated 16 August 2021, paragraph 1.2.2.1, was in effect at the time of Appellant's use of Delta-8 THC. Prosecution Exhibit 44 showed that the guidance memorandum Appellant was charged with disobeying expired on 16 August 2022, and Appellant's charged misconduct occurred on or about 1 September 2022 to 14 September 2022. (*Charge Sheet*, 27 February 2023, ROT, Vol. 1.)

The government agrees that the findings were legally insufficient, and the conviction should be set aside and dismissed with prejudice.

II.

APPELLANT WAS NOT SUBJECTED TO EXCESSIVE DELAY IN THE PROCESSING OF HIS COURT-MARTIAL AFTER JUDGMENT.

Additional Facts

On 23 December 2022, Congress amended Articles 66 and 69, UCMJ.[5] As amended,

[5] National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA), Pub. L. No. 117-263, §544, 136 Stat. 2395 (Dec. 23, 2022).

Article 66 expanded the CCA's jurisdiction to any judgment of a court-martial, irrespective of sentence, that includes a finding of guilty. Art. 66(b)(1)(A) (2022).

At the time of Appellant's trial, verbatim transcripts were not required for all findings of guilt. Department of the Air Force Manual (DAFMAN) 51-203, *Records of Trial*, dated 21 April 2021, para. 11.1.1. With respect to Appellant's conviction, a verbatim transcript would only have been required if his sentence had included death, dismissal, punitive discharge, or confinement for more than six months. Id. at 11.1.1.1. Since it did not, the court reporter prepared and completed the summarized transcript on 21 August 2023. (*Court Reporter Chronology*, dated 21 August 2023, ROT, Vol. 1.).

Appellant was sentenced on 30 June 2023. (*Entry of Judgement*, dated 17 July 2023, ROT, Vol. 1.) Fifty-two (52) days elapsed between sentencing and the completion of the summarized transcript. (*Court Reporter Chronology*, dated 21 August 2023, ROT, Vol. 1.) The ROT was forwarded to 18 AF/JA within twenty-three (23) days of the legal office receipt of the summarized transcript from the court reporter – for five of those days the legal office was evacuated due to a natural disaster. (*Government Motion to Attach*, 28 May 2025, App. A.) One day after 18 AF/JA received the ROT from the legal office, 18 AF/JA mailed Appellant the Notice of Right to Submit Direct Appeal to the address he provided on the AF Form 304. (Id.; *Notice of Right to Submit Direct Appeal to the Air Force Court of Criminal Appeals (AFCCA)*, 19 September 2023.)

Eighty-four days after his receipt of that notice, on 12 December 2023, Appellant provided this Court notice of his direct appeal. (*Notice of Direct Appeal*, 12 December 2023.) Appellant's case was docketed that day, and this Court ordered the government to forward a copy "of the record of trial to the court forthwith." (*Notice of Docketing*, 12 December 2023.)

On 19 March 2024, this Court ordered the government to provide an update, no later than 2 April 2024, regarding the status of the transcript. (*Order*, 19 March 2024.) On 2 April 2023, the government informed this Court that the ROT and verbatim transcript was mailed to JAJM that day. (*United States' Notice of Status Compliance*, 2 April 2024.) One hundred sixteen days elapsed between Appellant's decision to appeal, and a verbatim transcript being created and mailed to JAJM. This Court received the ROT and verbatim transcript on 19 April 2023. (*Government Motion to Attach*, 28 May 2025, App. B.)

Date	Action	Days Elapsed
30 June 2023	Sentencing	0
21 August 2023	Court Reporter emailed summarized transcript and Court Reporter documents to the Case Paralegal.	52
28 August to 1 September 2023	MacDill AFB evacuated due to Hurricane Idalia.	59-63
13 September 2023	ROT forwarded to 18 AF/JA.	75
19 September 2023	18 AF/JA mailed Appellant the Notice of Right to Submit Direct Appeal.	81
12 December 2023	Appellant filed his Notice of Right to Appeal. Case docketed with the Air Force Court of Criminal Appeals	165
4 January 2024	JAJM received the original ROT.	188
5 April 2024	Legal Office mailed three copies of the verbatim transcript to JAJM.	280
19 April 2024	The Air Force Court of Criminal Appeals received the ROT.	295

Since this Court received the ROT on 19 April 2024, Appellant has requested ten enlargements of time to file his assignments of error. The enlargements of time resulted in 374 days elapsing between this Court's receipt of the ROT, and Appellant filing his assignments of error with this Court. Prior to his assignment of error, Appellant never asserted his right to speedy post-trial processing.

Standard of Review

This Court reviews de novo an appellant's entitlements to relief for post-trial delay. United States v. Livak, 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020) (citing United States v. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006).

Law & Analysis

Prior to the amendment to Article 66, UCMJ, this Court established a rule that post-trial delay of more than 150 days from sentencing is presumptively unreasonable. Livak, 80 M.J. at 633. In those cases, when reviewing claims of unreasonable post-trial delay, this Court would evaluate (1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right of timely review and appeal; and (4) prejudice. United States v. Moreno, 63 M.J. 129, 135 (C.A.A.F. 2006) (citing Barker v. Wingo, 407 U.S. 514, 530 (1972)). All four factors were considered together and "[n]o single factor is required for finding a due process violation and the absence of a given factor will not prevent such a finding." Id. at 136.

CAAF recognized three interests that should be considered when determining prejudice due to post-trial delay: (1) prevention of oppressive incarceration pending appeal; (2) undue anxiety and concern; and (3) limiting the possibility that a convicted person's grounds for appeal and defenses, in case of retrial, might be impaired. Barker, 407 U.S. at 532. "Of those, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the

fairness of the entire system." Id. "The anxiety and concern subfactor involves constitutionally cognizable anxiety that arises from excessive delay and we 'require an appellant to show particularized anxiety or concern that is distinguishable from the normal anxiety experienced by prisoners awaiting an appellate decision.'" United States v. Toohey, 63 M.J. 353, 361 (C.A.A.F. 2006) (citing Moreno, 63 M.J. at 140). To find a due process violation when there is no prejudice under the fourth Barker factor, a court would need to find that, "in balancing the other three factors, the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness and integrity of the military justice system." Id. at 362.

Recently, however, this Court identified that the "statutory changes substantially altered the sequence of post-trial events" and held the "150-day threshold established in Livak does not apply to appeals by an accused under Article 66(b)(1)(A), UCMJ." United States v. Boren, No. ACM. 40296, 2025 CCA LEXIS 103, *47 (A.F. Ct. Crim. App. 19 March 2025). This Court explained that:

> unlike the old procedures for post-trial processing where the Government controlled the process, under the new procedures applicable to appeals under Article 66(b)(1), UCMJ (2024 *MCM*), an appellant is now in the driver's seat in determining whether post-conviction review is concluded under Article 65, UCMJ, or whether to seek appellate review from this court pursuant to Articles 66 and 69, UCMJ, and exercises significant control over the timing of that determination.

Id.

Yet, in United States v. Gray, this Court recognized there may be situation where "an appellant could demonstrate a case-specific facially unreasonable delay outside of Livak and Moreno that would trigger a Barker due process analysis. No. ACM 40648, 2025 CCA LEXIS 122, *15 (A.F. Ct. Crim. App. 24 March 2025).

A. This Court should decline to apply Livak or Moreno to Appellant's case.

Appellant recognizes that this Court limited Livak's "application to cases filed under Article 66(b)(1)(A)" but impliedly argues the delay in his case is presumptively unreasonable. (App. Br. at 18-19.) Specifically, Appellant argues this case is distinguishable from Boren because the delays at issue in this case were entirely within the government's control. (Id. at 19.) The delays Appellant focuses on are: (1) the 81 days that elapsed from sentencing until he received the Notice of Right to Submit Direct Appeal from 18 AF/JA; and (2) the 129 days it took for the government to provide the ROT to this court. (Id.)

While these time periods are attributable to the government, they are not excessive nor presumptively unreasonable. First, only 52 days elapsed from sentencing to when the court reporter sent the summarized transcript and court reporter documents to the legal office. (*Court Reporter Chronology*, dated 21 August 2023, ROT, Vol. 1.) The legal office then, even though it faced a mandatory five-day evacuation during Hurricane Idalia, forwarded the ROT to 18 AF/JA within twenty-three days of receiving the summarized transcript and court reporter documents from the court reporter. (*Government Motion to Attach*, 28 May 2025, App. A.) While there is no deadline for when an Appellant should be notified of his appellate rights, 18 AF/JA mailed out the Notice of Right to Submit Direct Appeal to Appellant only one day after it received the ROT. (*Notice of Right to Submit Direct Appeal to AFCCA*, 19 September 2023.) In Gray, when the Appellant was notified of his right to file a direct appeal 125 days after he was sentenced, this Court did not find the delay unreasonable. Gray, 2025 CCA LEXIS 122 at *12-13. Likewise, under these circumstances, 81 days were not excessive.

Nor was it excessive for 129 days to pass between when Appellant notified this Court of his direct appeal and when this Court received the ROT. Appellant had received the ROT on 23

September 2023 and then the verbatim transcript on 18 April 2024. (*Receipt of Record of Trial*, 18 April 2024.) The case was docketed with this Court the day Appellant filed his notice of appeal – 12 December 2023. A verbatim transcript had not been prepared because prior to Appellant's filing his notice of appeal, the government had no cause to prepare a verbatim transcript in his case under the guidance in DAFMAN 51-203, para. 11.1.1.1 or under R.C.M. 1114. A verbatim transcript was not required by the regulations in place at the time, but the government decided to prepare a verbatim transcript as a courtesy to Appellant and to assist the parties in fully litigating Appellant's appeal before the Air Force Court and other, higher courts, if necessary. Again, this Court in Gray did not find an unreasonable delay when 315 days elapsed from when Appellant notified this Court of his direct appeal and when this Court received the ROT. Gray, 2025 CCA LEXIS 122 at *12-13. Similarly, it should not find an excessive delay here where less than half that time elapsed.

Additionally, while Appellant "excludes" the 84 days between when he was notified of his right to appeal and when he notified this Court of his direct appeal from his excessive delay argument, it still demonstrates that Appellant was in the "driver's seat" and "exercise[d] significant control over the timing" of his determination. Boren, 2025 CCA LEXIS 103 at *47. Appellant was initially informed of his right to file an appeal on 24 June 2023 and the 90-day filing deadline when he was notified of his appellate rights by his trial defense counsel. (App. Ex. XXV at 8.) Had Appellant wanted to, he could have notified this Court of his direct appeal immediately following the notice of his appellate rights from 18 AF/JA.

B. Even if this Court assumed a facially unreasonable post-trial delay, Appellant cannot a establish a due process violation.

Even if this Court finds that Appellant demonstrated a facially unreasonable delay outside of Livak and Moreno, he still fails to establish a due process violation under Barker because he

was not prejudiced. Appellant claims both he and the "military justice institution" suffered harm from the delay. (App. Br. at 20.) First, Appellant claims his "ability to exercise his appellate rights has been severely inhibited by the delays." (Id.) Yet, he fails to provide an example to support this bald assertion. Instead, he argues that he was in a "waiting pattern" and his attorney "had to work through many other cases." (*Appellant Motion to Attach*, 28 April 2025, App.) Appellant only theorizes that maybe his attorney could have worked through his case sooner had they had received "all of the materials needed earlier." (Id.) Appellant did not suffer any prejudice because of the slight delay.

To find a due process violation where there is no prejudice, this Court would need to find that, "in balancing the other three factors, the delay is so egregious that tolerating it would adversely affect the public's perception of the fairness of the military justice system." Toohey, 63 M.J. at 362. This Court should conclude that the delay in Appellant's case was not so egregious as to impugn the fairness and integrity of the military justice system. It did not involve years of posttrial delay like in Moreno – over four years – Toohey – over six years, or Bush – over seven years. Furthermore, "there is no indication of bad faith on the part of any of the government actors." Anderson, 82 M.J. at 88. In fact, most of the delay in this case resulted from the government preparing a verbatim transcript, which was done to assist Appellant in filing his appeal.

Additionally, Appellant requested ten (10) enlargements of time, which resulted in an additional 374 days of delay from when he received the verbatim transcript, and this Court received the ROT, until he filed his assignments of error. To the extent that Appellant was "prejudiced" by the post-trial processing delay, he was arguably more prejudiced by his own delay in filing an appeal. Therefore, Appellant was not prejudiced nor was the delay so

egregious as to "adversely affect the public's perception of the fairness of the military justice system." Toohey, 63 M.J. at 362.

C. Even in the absence of a due process violation, relief for excessive post-trial is not appropriate.

"In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record" under Article 60c. 10 U.S.C. § 866(d)(2). As a guide to decide whether to invoke Article 66, UCMJ, to grant relief in the past, this Court has used a non-exhaustive list of factors to be considered, including:

> (1) How long the delay exceeded the standards set forth in Moreno;
>
> (2) What reasons, if any, the Government set forth for the delay, and whether there is any evidence of bad faith or gross indifference to the overall post-trial processing of this case;
>
> (3) Whether there is some evidence of harm (either to the appellant or institutionally) caused by the delay;
>
> (4) Whether the delay has lessened the disciplinary effect of any particular aspect of the sentence, and is relief consistent with the dual goals of justice and good order and discipline;
>
> (5) Whether there is any evidence of institutional neglect concerning timely post-trial processing; and
>
> (6) Given the passage of time, whether the court can provide meaningful relief.

United States v. Gay, 74 M.J. 736, 744 (A.F. Ct. Crim. App. 2015).

Assuming the Gay factors are still applicable in determining whether relief under Article 66(d)(2) is appropriate, this Court should not grant Appellant sentencing relief. While the delay may have exceeded the clock set forth in Moreno and Livak, that does not require this Court to grant Appellant relief. Contrary to Appellant's assertions, there was no evidence of institutional

neglect in processing Appellant's case. (App. Br. at 20.) Per the chronology, the court reporter was diligently working on Appellant's case in addition to her other assigned cases from the beginning of July to August 2023. (*Court Reporter Chronology*, dated 21 August 2023, ROT, Vol. 1.) Likewise, the legal office and 18 AF/JA processed Appellant's case quickly and attentively. (*Government Motion to Attach*, 28 May 2025, App. A.)

Further, this delay resulted from an unexpected amendment to Article 66 and the Air Force not yet having instituted procedural guidelines to produce verbatim transcripts for all cases that might be eligible for Article 66 review. The Air Force has since changed its policies to require verbatim transcripts in all general and special courts-martial with a finding of guilty, and so this type of delay is unlikely to reoccur. Department of the Air Force Instruction 51-201, *Administration of Military Justice*, dated 3 October 2024, para. 20.47.1.

In this case, Appellant has not experienced any prejudice to date. A remedy is not warranted. A balancing of the six Gay factors weighs in the government's favor, and no egregious or prejudicial delay yet exists requiring post-trial sentencing relief from this Court. This Court should deny this assignment of error.

However, if this Court should conclude that some relief is appropriate in Appellant's case, it should not restore his rank. Appellant, while at a family dinner at a local restaurant, snorted three "bumps" of cocaine with a stranger in the bathroom. He should not be restored to a Master Sergeant in light of those actions. Further, Appellant argues his "reduction in rank has continued to carry the same punitive impact it did when the punishment was first adjudged." Yet, this is not accurate. Appellant is no longer in the military as he faced administrative discharge – the punitive impact of his reduction in rank ended with that "unfavorable discharge." (*Appellant Motion to Attach*, 28 April 2025, App.) At most, this Court should only consider

removing Appellant's reprimand. This will ensure that airmen and noncommissioned officers are not forced to look up to a senior noncommissioned officer who wrongfully used cocaine.

III.

APPELLANT'S CONSTITUTIONAL RIGHTS WERE NOT VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITH NO REQUIREMENT THAT THE COURT-MARTIAL PANEL VOTE UNANIMOUSLY THAT HE WAS GUILTY.

Standard of Review

The adequacy of a military judge's instructions is reviewed de novo. United States v. Dearing, 63 M.J. 478, 482 (C.A.A.F. 2006) (citations omitted). The constitutionality of a statute is a question of law that is reviewed de novo. United States v. Wright, 53 M.J. 476, 478 (C.A.A.F. 2000) (*citing* United States v. Brown, 25 F.3d 307, 308 (6th Cir. 1994)).

Law and Analysis

In United States v. Anderson, No. ACM 39969, 2022 CCA LEXIS 181, at *55-56 (A.F. Ct. Crim. App. Mar. 25, 2022), this Court rejected the same claims Appellant raises now. Then, as Appellant readily admits, our Superior Court affirmed this Court's decision and definitively held that military members do not have a right to a unanimous verdict at court-martial under the Sixth Amendment, Fifth Amendment due process, or Fifth Amendment equal protection. *See* United States v. Anderson, 83 M.J. 291 (C.A.A.F. 2023). Notably, the Supreme Court denied certiorari in Anderson. *See* Order List, 601 U.S. __ (Feb. 20, 2024) (available at https://www.supremecourt.gov/orders/courtorders/022024zor_ggco.pdf); *see* also United States v. Cunningham, 83 M.J. 867 (C.A.A.F. 2023), Supreme Court certiorari denied by Cunningham v. United States, 2024 U.S. LEXIS 1430 (U.S., Mar. 25, 2024). Accordingly, the military judge

did not err in not providing an instruction for a unanimous verdict and Appellant's constitutional rights were not violated. Appellant's claim must fail.

IV.[6]

THE FINDING OF GUILTY FOR UNLAWFUL USE OF COCAINE WAS FACTUALLY AND LEGALLY SUFFICIENT.

Additional Facts

On 15 August 2022, Appellant was randomly selected for urinalysis inspection testing. (R. at 275.) His urinalysis sample was positive for cocaine. (Pros. Ex. 7; R. at 255-56.) The Department of Defense legal cutoff for cocaine is 100 nanograms per milliliter and Appellant tested at 220 nanograms per milliliter. (Pros. Ex. 7, 32; R. at 289, 303, 307.)

Following a proper rights advisement, Appellant confessed, to Supervisory Detective EG of 6th Security Forces Squadron (SFS), that he ingested three bumps of cocaine while in the restroom of a local Tampa, Florida restaurant in mid-August of 2022. (Pros. Ex. 17, 18; R. at 340.)

Appellant explained that while in the restroom he heard a stranger sniffing, looked and asked the man, "can I have some?" (Pros. Ex. 17, 18; R. at 173, 204.) While his wife and sixteen-year-old daughter sat at their table eating dinner, Appellant snorted three "bumps" of cocaine into his nose with a straw out of a plastic bag containing the Schedule II controlled substance. (Pros. Ex. 17, 18; R. at 173, 205-08, 286.) Appellant knew the substance he took was cocaine because the of the way it looked – he described it as a "white powder inside a clear bag" – and the stranger identified it as cocaine. (Pros. Ex. 17, 18; R. at 207-08.) Additionally,

[6] Issue IV is raised in accordance with United States v. Grostefon, 12 M.J. 431 (1982).

Appellant admitted to law enforcement that he knew the consumption of cocaine is illegal and no one tricked, threatened or coerced him into using cocaine. (Pros. Ex. 17, 18.)

During trial, the government introduced chain of custody documents from the Drug Demand Reduction Program (DDRP) and had witnesses from DDRP and an expert from the Air Force Drug Testing Lab (AFDTL) testify. (Pros. Ex. 1-10; R. 240, 281.) Appellant also testified in the defense's case in chief and reiterated that he ingested cocaine. (R. at 340.)

Standard of Review

The standard of review for factual and legal sufficiency is de novo. *United States v. McAlhaney*, 83 M.J. 164, 166 (C.A.A.F. 2023) (citing *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law and Analysis

The standard for factual and legal sufficiency is outlined in Issue I, *supra*.

The panel at Appellant's court-martial correctly found Appellant guilty on the convicted offense of wrongful use of cocaine, and there is no credible basis in the record for this Court to disturb Appellant's just verdict and sentence. Here, the United States presented the panel with ample evidence to convince them of Appellant's guilt beyond a reasonable doubt. This Honorable Court should equally be convinced and affirm Appellant's conviction.

A. The government provided evidence for all elements of the offense.

The government presented evidence beyond a reasonable doubt to show that Appellant wrongfully used cocaine. To prove Appellant wrongfully used cocaine, the government needed to prove that (1) on or about 12 August 2022, in the United States, Appellant used cocaine; (2) he actually knew that he used the substance; (3) he actually knew that the substance he used was cocaine; and (4) that the use was wrongful. MCM, United States, pt. IV, ¶ 50.b.(2). The

government did so through witness testimony, Appellant's own statements, and physical evidence.

Looking at the first element, the government proved that Appellant used cocaine. Following a random urinalysis with DDRP, Appellant tested positive for cocaine at 220 nanograms per milliliter. (Pros. Ex. 7, 32; R. at 289, 303, 307.) Appellant also admitted that he used cocaine around 15 August 2022. (R. at 340.) The government proved the first element.

Looking at the second and third element, the government proved that Appellant actually knew that he used a substance and that the substance was cocaine. "'Use' means to inject, ingest, inhale, or otherwise introduce into the human body, any controlled substance." United States v. Kelnhofer, No. 23012, 2024 CCA LEXIS, *11 (A.F. Ct. Crim. App. 15 Nov. 2024) (unpub. op.) (citing MCM, pt. IV, ¶ 50.c.(10)). The government introduced Appellant's interviews with law enforcement and his signed written statement. (Pros. Ex. 17, 18.) In those interviews, Appellant explained he heard a man making a sniffing sound in a restaurant bathroom and when he saw the man was sniffing a white powder out of a bag, he asked if he could have some. (Pros. Ex. 17; R. at 204.) He then used a straw to snort the substance into his nose directly out of the bag. (Pros. Ex. 17; R. at 205.) He knew the substance was cocaine because the stranger identified it as cocaine, it was a white powder, and the stranger was snorting it through his nose. (Pros. Ex. 17; R. at 208-09.) Appellant also explained that after ingesting the cocaine he felt alert, no pain, and was able to dance for the rest of the night. (Pros. Ex. 17; R. at 208.) The government proved the second element of the offense.

Looking at the last element, the government proved that the use was wrongful. To be wrongful, the use must be without legal justification or authorization. MCM, pt. IV, para. 50.c.(5). Here the government proved that Appellant did not have legal authorization or

justification when he took a bag of cocaine from a stranger in a restaurant and snorted three bumps of cocaine using a straw.

Dr. HH, the AFDTL expert, testified that cocaine is a Level II controlled substance and the DoD cutoff level for cocaine was 100 nanograms per milliliter. Appellant tested at 220 nanograms per milliliter well over the legal limit. (R. at 286, 289, 303.) Additionally, although not required to be convicted of the offense, Appellant knew that consuming cocaine was illegal. (Pros. Ex. 18.)

The government provided evidence for all elements of the offense.

B. Appellant failed to trigger factual sufficiency review because he did not demonstrate a specific deficiency in proof.

Appellant failed to demonstrate a specific deficiency in proof because witness testimony, physical evidence, and Appellant's own statements support each element of the offense. As identified above, factual sufficiency review is triggered only if an appellant (1) asserts it as an assignment of error, and (2) shows "a specific deficiency in proof."[7] 10 U.S.C. § 866(d)(1)(B)(i); Harvey, 85 M.J. at 130. As amended, Article 66(d)(1)(B)(i) "eliminat[ed] a CCA's duty, ***and power***, to review a conviction for factual sufficiency absent an appellant" meeting both triggers. Id. (internal citations omitted) (emphasis added). While Appellant has asserted factual sufficiency as an assignment of error, he has not identified a deficiency of proof. (App. Gros. Br. at 24.)

In his brief, Appellant only generally argues that his cocaine conviction is factually insufficient because "of the extreme physical and mental health conditions that he faced at the

[7] The issue of "the meaning of the phrase 'specific showing of a deficiency in proof'" was before our superior court in United States v. Harvey. Harvey, 85 M.J. at 130. However, because both parties agreed the Appellant had met his burden to make a specific showing of a deficiency of proof in that case, it was not addressed. Id.

time of the offense." (Id.) He argues that because of these conditions his judgment was comprised when he snorted the cocaine and that somehow "undermin[ed] the notion that he purposefully engaged in criminal behavior by knowingly consuming cocaine.[8] (Id. at 24-25.) These arguments do not demonstrate a specific deficiency proof and are undercut by the fact that Appellant had the burden at trial under R.C.M. 916 to prove lack of mental responsibility and did not do so. Nor did Appellant even ask for an instruction on that defense. (R. at 571-76.) Despite whatever mental and health conditions Appellant claims he had, Appellant failed to meet his burden to establish a defense of lack of mental responsibility.

Because Appellant did not meet both threshold elements for review by demonstrating a *specific* deficiency in proof, this Court lacks the power to perform a factual sufficiency review.

C. Even if this Court decides Appellant met both threshold elements to trigger factual sufficiency review, the weight of the evidence supports the conviction.

The weight of the evidence supports Appellant's conviction for wrongful use of cocaine. Giving appropriate "deference to the fact that the trial court saw and heard the witnesses and other evidence," this Court must be "clearly convinced that the finding of guilty was against the weight of the evidence" before they may "dismiss, set aside, or modify the finding, or affirm a lesser finding." 10 U.S.C. § 866(d)(1)(B)(iii).

To be "clearly convinced," this Court must meet two requirements: (1) "the evidence, as the CCA has weighed it, does not prove that the appellant is guilty beyond a reasonable doubt;"

[8] For additional background, and not to be considered by this Court for legal and factual sufficiency purposes, prior to trial a sanity board was conducted. (App. Ex. XVIII.) The sanity board was conducted by a clinical neuropsychologist and unlicensed psychologist to address questions regarding Appellant's mental state. (Id.) The board determined Appellant did not have a severe mental disease or defect at the time of the alleged criminal conduct. (Id.) Neither did Appellant, at the time of the alleged criminal conduct, have such a severe mental disease or defect that he was unable to appreciate the nature and quality or wrongfulness of his conduct. (Id.)

and (2) this Court "must be clearly convinced of the correctness of this decision." Harvey, 85 M.J. at 132.

When providing the panel members the required and appropriate deference for having seen all the witnesses and evidence at trial, including hearing the witnesses testify, Appellant's confession – both to law enforcement and in open court, and the results of the urinalysis and accompanying physical evidence, this Court should *not* be clearly convinced that the weight of the evidence does not support the conviction beyond a reasonable doubt.

The same holds true for his legal sufficiency claim. Viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." King, 78 M.J. at 221 (internal citations omitted). Additionally, the weight of the evidence supports the conviction beyond a reasonable doubt, and this Court should not be "clearly convinced that the finding of guilty was against the weight of the evidence" and affirm the finding of guilt. 10 U.S.C. § 866(d)(1)(B)(iii).

For the reasons outlined above, this Court should find the conviction legally and factually sufficient and deny this assignment of error.

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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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 28 May 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**REPLY BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 2
Master Sergeant (E-7), **LUIS A. TORRES GONZALEZ,** United States Air Force, *Appellant.*	)	No. ACM 24001
	)	4 June 2025

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

Appellant, Master Sergeant (MSgt) Luis A. Torres Gonzalez, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply to the Government's Answer (Ans.), dated 28 May 2025. In addition to the arguments in his opening brief (Opening Br.), filed on 28 April 2025, MSgt Torres Gonzalez submits the following arguments for the issues below.

I.

MSgt Torres Gonzalez's wrongful conviction for use of delta-8-tetrahydrocannibinol warrants setting aside his reduction in rank.

The Government concedes that MSgt Torres Gonzalez's conviction for violating an obsolete regulation that prohibited the use of delta-8-tetrahydrocannibinol (delta-8) (Charge II and its specification) is legally insufficient. (Ans. at 6.) This Court should concur with the parties and set aside and dismiss the conviction with prejudice. Because MSgt Torres Gonzalez was wrongly convicted of this offense, he was also sentenced for it and the Government used it as a matter in aggravation. It did so by arguing that it showed MSgt Torres Gonzalez was using drugs on a continual basis. (R. at 588.) This error warrants reassessment of MSgt Torres Gonzalez's sentence to purge the resulting prejudice to his sentence. A "reassessed sentence must be purged of prejudicial error." *United States v. Sales*, 22 M.J. 305, 308 (C.M.A. 1986). Without the conviction

for use of delta-8, the only remaining charge that MSgt Torres Gonzalez faced was for a one-time wrongful use of cocaine. Had this been the case, the Government would have been unable to suggest to the panel that MSgt Torres Gonzalez has been engaged in a pattern of drug abuse, rather than a single discrete occurrence. This would have dramatically reduced the aggravating circumstances available for the Government to argue.

The consequences of the court-martial proceeding are even more egregious in light of MSgt Torres Gonzalez's retirement eligibility at the time of the conviction. (Pros. Ex. 45.) The Government acknowledges that MSgt Torres Gonzalez was administratively discharged. (Ans. at 15.) Had the wrongful conviction for delta-8 not been entered, it is conceivable that MSgt Torres Gonzalez would have instead retired from the service. The Court of Appeals for the Armed Forces (C.A.A.F.) "has long recognized" that the loss of retirement benefits is "a direct and proximate consequence" of the proceeding that is a relevant consideration for the sentence imposed. *United States v. Easterly*, 79 M.J. 325, 327 n.2 (C.A.A.F. 2020) (quoting *United States v. Greaves*, 46 M.J. 133, 139 (C.A.A.F. 1997); *United States v. Griffin*, 25 M.J. 423, 424 (C.M.A. 1988)). This prejudice can only be purged through meaningful sentencing relief that should include setting aside his reduction in rank. This is warranted given MSgt Torres Gonzalez's otherwise exemplary career which was devoid of any misconduct. (Opening Br. at 5.)

IV.[1]

MSgt Torres Gonzales raised a specific deficiency regarding the voluntariness of his actions regarding his conviction for cocaine use that warrants setting it aside and dismissing with prejudice.

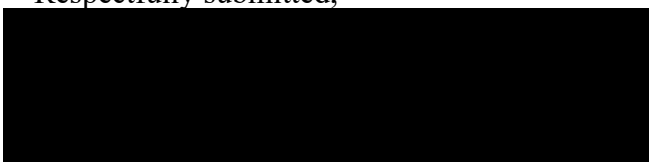
MSgt Torres Gonzalez is entitled to review under Article 66, Uniform Code of Military Justice (U.C.M.J.), 10 U.S.C. § 866, for the factual and legal insufficiency of his conviction for use of cocaine. The Government contends that MSgt Torres Gonzalez has failed to raise a "specific deficiency in proof" so as to trigger factual sufficiency review of the findings under Article 66. (Ans. at 20.) However, MSgt Torres Gonzalez did raise a deficiency by challenging whether the Government proved that the unlawful act was voluntary. (Opening Br. at 24.) This challenge is principally rooted in the evidence adduced at trial that shows that MSgt Torres Gonzalez was in a state of extreme physical and mental pain that compromised his decision-making capacity.

No conviction may stand unless the underlying conduct involved the "concurrence of an evil-meaning mind with an evil-doing hand." *Morissette v. United States*, 342 U.S. 246, 251 (1952). Put differently, the Government must prove both the voluntariness of the act as well as the necessary mental state. *United States v. Torres*, 74 M.J. 154, 157 (C.A.A.F. 2015). Involuntary action, such as automatism, undermines the actus reus of a criminal offense. *Id.* at 157. MSgt Torres Gonzalez's testimony at trial strongly suggests that his use of cocaine was driven by his severely compromised judgment because of his constant pain. (Opening Br. at 2.) This was echoed by expert testimony establishing that extreme pain results in a negative impact on decision-making. (R. at 562-63.) The Government also misapprehends the burden for showing a lack of mental responsibility, (Ans. at 21), because "shifting the burden of proof on mental responsibility

[1] This Assignment of error (AOE) was raised in the appendix to the Brief on Behalf of Appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

to the accused does not . . . change the standard of review or the tests for either factual or legal sufficiency." *United States v. Martin*, 56 M.J. 97, 104 (C.A.A.F. 2001) (citing *United States v. Martin*, 53 M.J. 745, 747 (A. Ct. Crim. App. 2000)). Moreover, all relevant evidence of lack of mental responsibility must be considered on appellate review. *United States v. Dubose*, 47 M.J. 386, 388-89 (C.A.A.F. 1998). This includes the defense expert opinion which would have been a proper consideration for the trier of fact. *Id.* at 388. Accordingly, MSgt Torres Gonzalez raised a deficiency of proof sufficient to trigger factual sufficiency review under Article 66, and this Court should find that evidence failed to prove that his actions were voluntary.

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 4 June 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' MOTION TO ATTACH
v.	)	Before Panel No. 3
Master Sergeant (E-7) **LUIS A. TORRES GONZALEZ** United States Air Force *Appellant.*	)	No. ACM 24001 28 May 2025

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

Pursuant to Rule 23(b) of this Court's Rules of Practice and Procedure, the United States respectfully requests to attach the following document to this motion:

- Appendix A – Colonel Matthew Neil Declaration, 20 May 2025 (1 page)
- Appendix B – Record of Receipt of Trial – Direct Appeal, 19 April 2024 (1 page)

On 28 April 2025, Appellant filed his Assignments of Error, which included a request for meaningful relief due to post-trial processing delay. (App. Br. at 15-21.) The attached declaration explains the reason for the time it took from sentencing and this Court's receipt of the verbatim transcript and Record of Trial. Consistent with United States v. Jessie, this Court may consider this declaration in order to resolve an issued raised by the record: whether the delay in post-trial processing was unreasonable. 79 M.J. 437, 445 (C.A.A.F. 2020).

WHEREFORE, this Court should grant the United States' motion to attach.

GRANTED
6 JUN 2025

[redacted]
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing motion and the Appendix was delivered to the Court and the Air Force Appellate Defense Division on 28 May 2025 via electronic mail.

[redacted]
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