

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

UNITED STATES	)	No. ACM S32762 (f rev)
<i>Appellee</i>	)	
	)	
v.	)	
	)	NOTICE OF
Damien M. WELLS	)	DOCKETING
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

The record of trial in the above-styled case was returned to this court on 12 February 2024 by the Military Appellate Records Branch (JAJM) for re-docketing with the court.

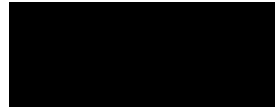
Accordingly, it is by the court on this 12th day of February, 2024,

**ORDERED:**

That the Record of Trial in the above styled matter is referred to Panel 2 for appellate review.



FOR THE COURT



TANICA S. BAGMON  
Appellate Court Paralegal

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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM S32762 (f rev)
<b>DAMIEN M. WELLS</b>	)	
United States Air Force	)	2 April 2024
<i>Appellant</i>	)	

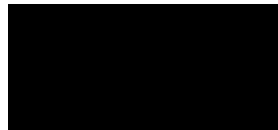
**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **11 June 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 50 days have elapsed. On the date requested, 120 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Undersigned counsel has not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

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

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: [heather.bruha@us.af.mil](mailto:heather.bruha@us.af.mil)

**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil


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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

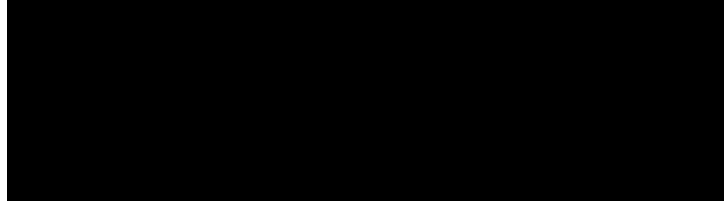
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 2 April 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

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

UNITED STATES	)	No. ACM S32762 (f rev)
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Damien M. WELLS	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 31 May 2024, counsel for Appellant submitted a Motion for Enlargement of Time (Second) requesting an additional 30 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 5th day of June, 2024,

**ORDERED:**

Appellant's Motion for Enlargement of Time (Second) is **GRANTED**. Appellant shall file any assignments of error not later than **11 July 2024**.

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits. Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal.

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

---

\* Appellant's motion erroneously states Appellant was convicted in 2024.

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Commissioner



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM S32762 (f rev)
<b>DAMIEN M. WELLS</b>	)	
United States Air Force	)	31 May 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **11 July 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 109 days have elapsed. On the date requested, 150 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Undersigned counsel has not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

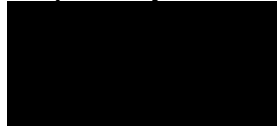
On 7 July 2024, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional

specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is currently confined.

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

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 31 May 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

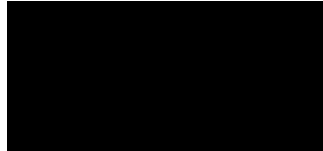
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



BRITTANY M. SPEIRS, Maj, USAFR  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 June 2024.



BRITTANY M. SPEIRS, Maj, USAFR  
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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM S32762 (f rev)
<b>DAMIEN M. WELLS</b>	)	
United States Air Force	)	26 June 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(2) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **10 August 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 135 days have elapsed. On the date requested, 180 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Undersigned counsel has not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

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

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

Respectfully submitted,

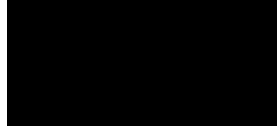


HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 26 June 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil




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

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

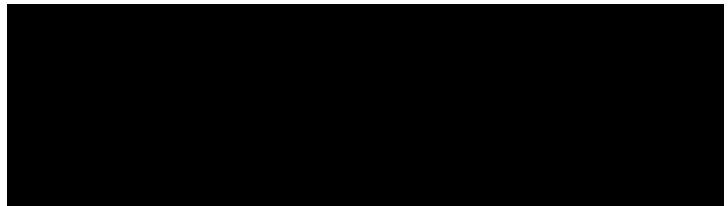
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 26 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FOURTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM S32762 (f rev)
<b>DAMIEN M. WELLS</b>	)	
United States Air Force	)	2 August 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 September 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 172 days have elapsed. On the date requested, 210 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Undersigned counsel has not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

Undersigned counsel is currently assigned 22 cases, with 8 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing Motion for EOT 3 in this case, undersigned counsel filed the Grant Brief and Joint Appendix in *United States v. Greene-Watson* (Dkt. No. 24-0096/AF; ACM 40293) with the Court of Appeals for the Armed Forces (CAAF); the Brief on Behalf of Appellant in *United States v. Clark* (ACM 23017) with this Court; and civilian appellate defense counsel filed the Brief on Behalf of Appellant in *United States v. Martell* (ACM 40501) with this Court.

Of note, the 4th of July holiday and Family Day were 4-5 July 2024. Undersigned counsel also had scheduled leave 26 June – 1 July and 8-10 July. Additionally, the JAJA Newcomers Training is scheduled for 13-14 August 2021. Undersigned counsel is working on the Reply Brief in *Greene-Watson* currently due to the CAAF on 5 August 2024. Undersigned counsel will then be working on the Petition and Supplement to the Petition in *United States v. Arroyo* (ACM 40321

(f rev)) currently due to the CAAF on 17 August 2024. Further, a potential Reply Brief in *United States v. Clark* (ACM 23017) is tentatively due to this Court on 14 August 2024.

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

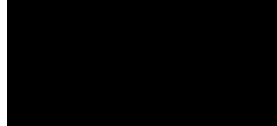
1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Of note, this case has moved up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

Appellant has provided limited consent to disclose confidential communications with counsel wherein he was advised of his right to a timely appeal, counsel's progress on the case,

the request for this enlargement of time, and wherein he consented to the request for this enlargement of time.

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

Respectfully submitted,

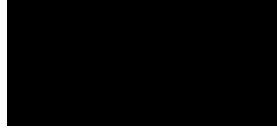


HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

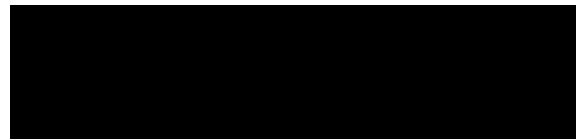
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

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



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



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 5 August 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**

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (FIFTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM S32762 (f rev)
<b>DAMIEN M. WELLS</b>	)	
United States Air Force	)	29 August 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **9 October 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 199 days have elapsed. On the date requested, 240 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Undersigned counsel has not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

Undersigned counsel is currently assigned 21 cases, with 9 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing Motion for EOT 4 in this case, undersigned counsel filed the Reply Brief in *United States v. Greene-Watson* (Dkt. No. 24-0096/AF; ACM 40293) and the Petition in *United States v. Arroyo* (ACM 40321 (f rev)) with the Court of Appeals for the Armed Forces (CAAF).

Of note, the JAJA Newcomers Training was held 13-14 August 2024, and the Joint Appellate Advocacy Training (JAAT) is scheduled for 25-26 September 2024. Undersigned counsel will file the Supplement to the Petition in *Arroyo* in the near future (now due 3 September 2024). Undersigned counsel is currently working on the Petition and Supplement to the Petition in *United States v. Van Velson* (ACM 40401), which is due to the CAAF on 10 September 2024. Additionally, the Petition in *United States v. Holmes* (Misc. Dkt. No. 2024-1) is due to the CAAF on 10 September as well. Undersigned counsel will turn to the Supplement to the Petition in

*Holmes* after filing the Supplements to the Petitions in both *Arroyo* and *Van Velson*. A potential Reply Brief is due to this Court in *United States v. Martell* (ACM 40501) on 4 September 2024, which civilian appellate defense counsel is currently working. Undersigned counsel will then be turning to oral argument preparations in *Greene-Watson*, which is currently scheduled as an outreach oral argument with the CAAF on 10 October 2024. Finally, a potential Reply Brief will also be due to this Court in *United States v. Sherman* (ACM 40486) at some point in September 2024.

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

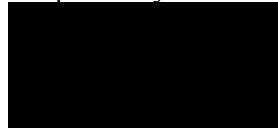
1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Of note, this case has moved up in priority given civilian appellate defense counsel's availability to work on the case below and the higher EOT number for *Arizpe*.
2. *United States v. Clark* (ACM 40540): The trial transcript is 1,579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits. On 30 April 2024, this Court granted in part appellant's Consent Motion to Examine Sealed Material and Transmit to Civilian Counsel. Military appellate defense counsel transmitted the authorized sealed material to civilian appellate defense counsel on 22 July 2024.

3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours.

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

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

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

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

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

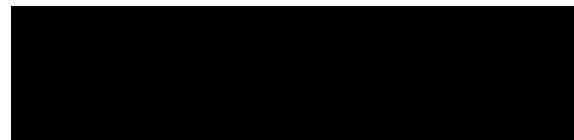
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

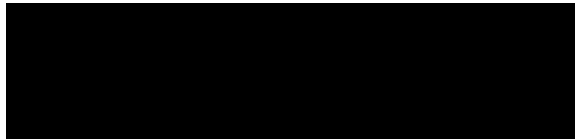
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 September 2024.



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



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee</i>	)	<b>TIME (SIXTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Senior Airman (E-4)	)	No. ACM S32762 (f rev)
<b>DAMIEN M. WELLS</b>	)	
United States Air Force	)	30 September 2024
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **8 November 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Undersigned counsel has not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

Undersigned counsel is currently assigned 18 cases, with 9 initial briefs pending before this Court. Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete her review of Appellant's case. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors. Since filing Motion for EOT 5 in this case, undersigned counsel has filed the Supplement to the Petition for Grant of Review in *United States v. Arroyo* (ACM 40321 (f rev), USCA Dkt. No. 24-0212/AF) with the Court of Appeals for the Armed Forces (CAAF); the Petitions and Supplements to the Petitions for Grant of Review in *United States v. Van Velson* (ACM 40401, USCA Dkt. No. 24-0225/AF) and *United States v. Holmes* (Misc. Dkt. No. 2024-1, USCA Dkt. No. 24-0224/AF) with the CAAF; a Motion for Reconsideration in *United States v. Hennessy* (ACM 40439) with this Court; the Reply Brief in *United States v. Sherman* (ACM 40486) with this Court; and civilian appellate defense counsel filed the Reply Brief in *United States v. Martell* (ACM 40501) with this Court.

Of note, the family day/Labor Day holiday weekend was 30 August-2 September; and the family day/Indigenous Peoples' Day is 11-14 October. Military appellate defense counsel was

also on unexpected leave for a family funeral 24-27 September 2024. Undersigned counsel is currently preparing for oral argument in *United States v. Greene-Watson* (ACM 40293, USCA Dkt. No. 24-0096/AF), which is currently scheduled as an outreach oral argument with the CAAF on 10 October 2024.

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

1. *United States v. Arizpe* (ACM 40507): The unsealed portion of the verbatim transcript is 1,040 pages long and the record of trial is comprised of four volumes containing seven prosecution exhibits, one defense exhibit, 34 appellate exhibits, and one court exhibit. Of note, this case has moved up in priority given civilian appellate defense counsel's availability to work on the case below and the higher EOT number for *Arizpe*.
2. *United States v. Clark* (ACM 40540): The trial transcript is 1,579 pages long and the record of trial is comprised of 13 volumes containing 19 prosecution exhibits, one defense exhibit, 87 appellate exhibits, and zero court exhibits. On 30 April 2024, this Court granted in part appellant's Consent Motion to Examine Sealed Material and Transmit to Civilian Counsel. Military appellate defense counsel transmitted and viewed the authorized sealed material to civilian appellate defense counsel on 22 July 2024.
3. *United States v. Cooley* (ACM 40376): The unsealed portion of the verbatim transcript is 1,587 pages long and the record of trial is comprised of 10 volumes containing 29 prosecution exhibits, 16 defense exhibits, 109 appellate exhibits, and

two court exhibits. The sealed transcript is 69 pages long; there is one sealed exhibit that is a document and one sealed exhibit that is a video lasting approximately eight hours. Undersigned counsel has only reviewed the sealed material in the record of trial.

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

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

Respectfully submitted,

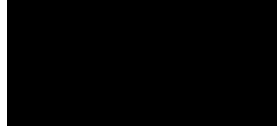


HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 30 September 2024.

Respectfully submitted,



HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4772  
Email: heather.bruha@us.af.mil

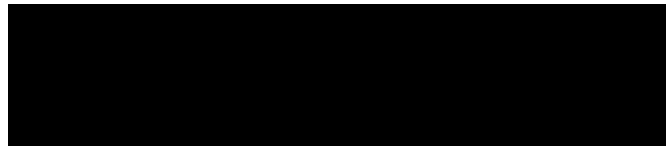
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

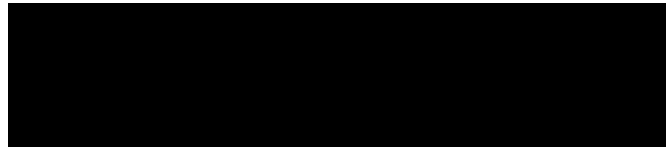
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 1 October 2024.



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

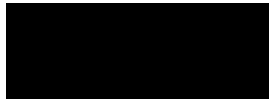
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	<b>NOTICE OF APPEARANCE</b>
	)	
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	20 October 2024

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

COMES NOW the undersigned counsel, pursuant to Rule 13 of this Honorable Court's Rules of Practice and Procedure, and enters an appearance as counsel for Appellant.

Respectfully submitted,

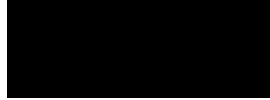


REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil



## **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 20 October 2024.



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(SEVENTH)</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	1 November 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Damien Wells, Appellant, hereby moves for an enlargement of time to file his assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **8 December 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 263 days have elapsed. On the date requested, 300 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Appellate counsel had not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

Through no fault of SrA Wells, undersigned counsel has been working on other matters and is yet to complete her review of his case. Undersigned counsel is a reservist and has a full-time civilian job in the private sector serving clients. She has just been assigned to the case and received the Record of Trial. Counsel has Inactive Duty Training (IDT) days scheduled in November and December to work on cases. This enlargement of time is necessary to allow undersigned counsel to fully review SrA Well's case and advise him regarding potential errors.

SrA Wells was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of the request for an enlargement of time, and (4) agrees with the request for an enlargement of time.

Undersigned counsel currently represents 3 clients and is presently assigned 2 cases pending initial brief before this Court. This case is her second priority case before the court.<sup>1</sup> The following case has priority over the present case:

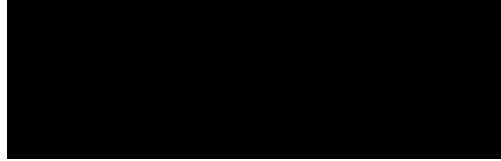
---

<sup>1</sup> *Maj Heather Bruha remains assigned to this case but it is anticipated she will submit a motion to withdraw as counsel in the near future. Until such a time as her motion is filed and granted, undersigned counsel is lead appellate counsel. As the case is substantially higher on undersigned counsel's priority case list than it is on Maj Bruha's priority case list, only undersigned counsel's list is provided, to provide the most accurate view of the case's prioritization and counsel's ability to complete review on the case.*

1. *United States v. Valadez* (ACM No. 40553): The record of trial consists of four volumes, six appellate exhibits, two prosecution exhibits, five defense exhibits, and two court exhibits. The transcript is 151 pages. A1C Valadez is confined. Undersigned counsel has recently been assigned to this case and has begun her review of the record of trial.

**WHEREFORE**, SrA Wells respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

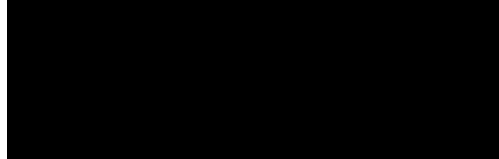


REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

**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 1 November 2024.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

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

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

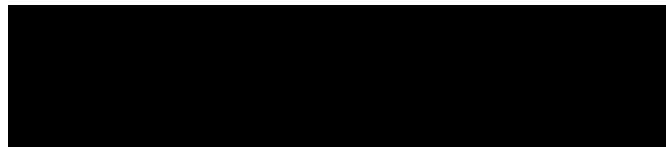
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 1 November 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**

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(EIGHTH)</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	23 November 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Damien Wells, Appellant, hereby moves for an enlargement of time to file his assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **7 January 2024**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 285 days have elapsed. On the date requested, 330 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Appellate counsel had not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification



of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

Through no fault of SrA Wells, undersigned counsel has been working on other matters and is yet to complete her review of his case. Undersigned counsel is a reservist and has a full-time civilian job in the private sector serving clients. She has just been assigned to the case and received the Record of Trial. Counsel has Inactive Duty Training (IDT) days scheduled in December and January to work on cases. This enlargement of time is necessary to allow undersigned counsel to fully review SrA Well's case and advise him regarding potential errors.

SrA Wells was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of the request for an enlargement of time, and (4) agrees with the request for an enlargement of time.

Undersigned counsel currently represents 3 clients and is presently assigned 2 cases pending initial brief before this Court, and 1 case pending appeal to the Court of Appeal for the Armed Forces ("CAAF"). This case is counsel's third priority case overall, and second priority before this court.<sup>1</sup> The following cases have priority over the present case:

---

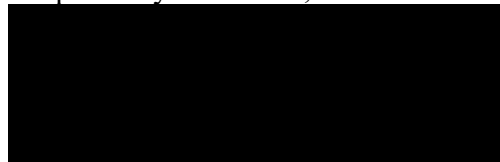
<sup>1</sup> *Maj Heather Bruha remains assigned to this case, but undersigned counsel is lead appellate counsel. As the case is substantially higher on undersigned counsel's priority case list than it is on Maj Bruha's priority case list, only undersigned counsel's list is provided, to provide the most accurate view of the case's prioritization and counsel's ability to complete review on the case.*

1. *United States v. Dolehanty* (ACM No. 40510): The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 248 pages. The Appellant is not confined. This honorable court recently issued a decision in this case, and it is now pending appeal to CAAF. Undersigned counsel has begun her draft of the appeal.
2. *United States v. Valadez* (ACM No. 40553): The record of trial consists of four volumes, six appellate exhibits, two prosecution exhibits, five defense exhibits, and two court exhibits. The transcript is 151 pages. A1C Valadez is confined. Undersigned counsel has begun, but not yet finished, her review of the record of trial.

Since the last request for an Expansion of Time in this case, undersigned counsel has used IDT days to further her review of the *Valadez* record of trial, advise her client in *Dolehanty*, and begin the draft CAAF brief in that case.

**WHEREFORE**, SrA Wells respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

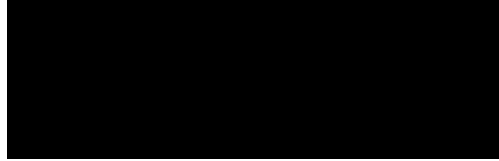


REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

**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 23 November 2024.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

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

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

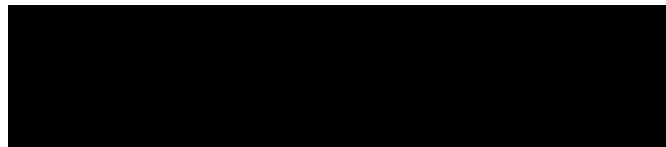
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 25 November 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**

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(NINTH)</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	18 December 2024

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Damien Wells, Appellant, hereby moves for an enlargement of time to file his assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **6 February 2025**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 310 days have elapsed. On the date requested, 360 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Appellate counsel had not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

Through no fault of SrA Wells, undersigned counsel has been working on other matters and is yet to complete her review of his case. Undersigned counsel is a reservist and has a full-time civilian job in the private sector serving clients. She has just been assigned to the case and received the Record of Trial. Counsel has Inactive Duty Training (IDT) days planned in January to work on cases. This enlargement of time is necessary to allow undersigned counsel to fully review SrA Well's case and advise him regarding potential errors.

SrA Wells was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of the request for an enlargement of time, and (4) agrees with the request for an enlargement of time.

Undersigned counsel currently represents 3 clients and is presently assigned 2 cases pending initial brief before this Court, and 1 case pending appeal to the Court of Appeal for the Armed Forces ("CAAF"). This case is counsel's third priority case overall, and second priority before this court.<sup>1</sup> The following cases have priority over the present case:

---

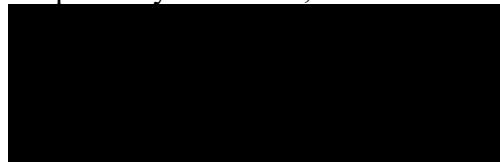
<sup>1</sup> *Maj Heather Bruha remains assigned to this case, but undersigned counsel is lead appellate counsel. As the case is substantially higher on undersigned counsel's priority case list than it is on Maj Bruha's priority case list, only undersigned counsel's list is provided, to provide the most accurate view of the case's prioritization and counsel's ability to complete review on the case.*

1. *United States v. Dolehanty* (ACM No. 40510): The Record of Trial consists of four volumes, seven prosecution exhibits, one defense exhibit, and nine appellate exhibits; the transcript is 248 pages. The Appellant is not confined. This honorable court recently issued a decision in this case, and it is now pending appeal to CAAF. Undersigned counsel has begun her draft of the appeal.
2. *United States v. Valadez* (ACM No. 40553): The record of trial consists of four volumes, six appellate exhibits, two prosecution exhibits, five defense exhibits, and two court exhibits. The transcript is 151 pages. A1C Valadez is confined. Undersigned counsel has completed her review of the record of trial.

Since the last request for an Expansion of Time in this case, undersigned counsel has used her IDTs to begin her review of the Appellant's record of trial, finish her review of the *Valadez* record of trial, further advise her client in *Dolehanty*, and further draft the CAAF brief in that case.

**WHEREFORE**, SrA Wells respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,



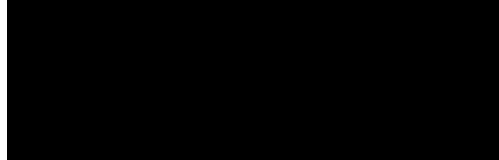
REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil



**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 at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 18 December 2024.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

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

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

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

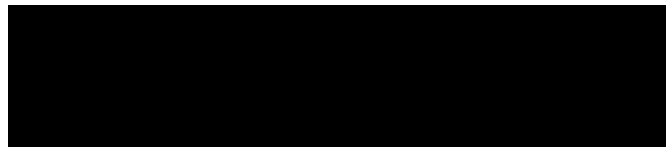
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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 19 December 2024.



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

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

**UNITED STATES**

*Appellee*

v.

Senior Airman (E-4)

**DAMIEN M. WELLS**

United States Air Force

*Appellant*

) **MOTION FOR WITHDRAWAL OF**

) **APPELLATE DEFENSE COUNSEL**

)

) Before Panel No. 2

)

) No. ACM S32762 (f rev)

)

) 19 December 2024

)

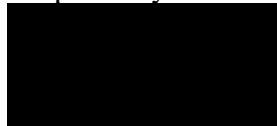
**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rules 12(b), 12.4, and 23.3(h) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel respectfully requests to withdraw as counsel in the above-captioned case. Appellant has released undersigned counsel due to her congested docket. Major Rebecca Saathoff has previously been detailed substitute counsel in undersigned counsel's stead and has previously filed several Extensions of Time in the case. Counsel have previously completed a thorough turnover of the case and Maj Saathoff has begun review of the record.

Appellant has been advised of this motion to withdraw as counsel and consents to undersigned counsel's withdrawal. A copy of this motion will be delivered to Appellant following its filing.

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

Respectfully submitted,



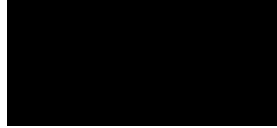
HEATHER M. BRUHA, Maj, USAF  
Appellate Defense Counsel

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

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 19 December 2024.

Respectfully submitted,



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

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(TENTH)</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	18 January 2025

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Damien Wells, Appellant, hereby moves for an enlargement of time to file his assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **8 March 2025**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 341 days have elapsed. On the date requested, 390 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Appellate counsel had not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

Through no fault of SrA Wells, undersigned counsel has been working on SrA Wells case, but has not yet completed her review of the ROT. Undersigned counsel is a reservist and has a full-time civilian job in the private sector serving clients. She has Inactive Duty Training (IDT) days planned in February to work on cases, and will be performing her Annual Tour from 24 February to 7 March 2025. This enlargement of time is necessary to allow undersigned counsel to fully review SrA Well's case and advise him regarding potential errors. Additionally, since the last EOT in this case was requested, counsel has identified sealed exhibits in the ROT that she will need to examine as part of her due diligence. Counsel anticipates filing a motion regarding these sealed items soon. Counsel resides in California but will be at Joint Base Andrews during her upcoming annual tour in February, during which time she can review the sealed exhibits. Should this Court grant that separate motion to examine sealed materials, this enlargement of time will enable counsel to review these sealed files herself without the need to assign additional/new counsel to this case.



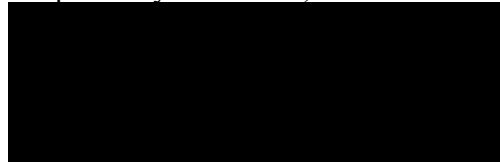
SrA Wells was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of the request for an enlargement of time, and (4) agrees with the request for an enlargement of time.

Undersigned counsel currently represents 2 clients and is presently assigned 1 case pending initial brief before this Court. This case is counsel's top priority case overall.

Since the last request for an Expansion of Time in this case, undersigned counsel has used her IDTs to further her review of the Appellant's record of trial, begin drafting a motion regarding review of the sealed exhibit in this case, advise her client in *United States v. Valadez* (ACM No. 40553) and submit a Motion to Withdraw from Appellate Review in that case, and finish drafting and filing a CAAF petition and supplement in *United States v. Dolehanty* (ACM No. 40510).

**WHEREFORE**, SrA Wells respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

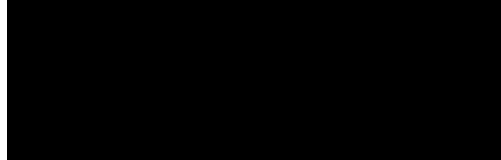


REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

**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 at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 18 January 2025.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

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

UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Senior Airman (E-4)	)	ACM S32762 (f rev)
DAMIEN M. WELLS, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its 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. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

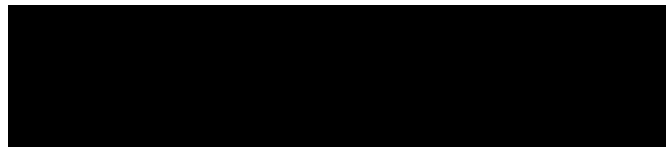
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 21 January 2025.



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

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

<b>UNITED STATES</b>	)	<b>No. ACM S32762 (f rev)</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Damien M. WELLS</b>	)	
<b>Senior Airman (E-4)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 4 February 2025, Appellant’s counsel submitted a Consent Motion to Examine Sealed Material, requesting counsel for both parties be allowed to examine certain portions of the record of trial ordered sealed, specifically:

- (1) Article 32, UCMJ, 10 U.S.C. § 832, Preliminary Hearing Officer (PHO) Exhibits 4–6 and 39–40;
- (2) Portions of the audio recording of the Article 32, UCMJ, hearing; and
- (3) Prosecution Exhibit 8.

The requested materials were presented or reviewed by the parties at the pre-trial hearing or at trial.

Appellant’s counsel asserts

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

Appellant’s counsel avers the Government consents to this motion.

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

The court finds Appellant has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate

defense counsel's responsibilities. This court's order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 10th day of February, 2025,

**ORDERED:**

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

Appellate defense counsel and appellate government counsel may view **Prosecution Exhibit 8, PHO Exhibits 4–6 and 39–40, and the sealed audio recording of the Article 32, UCMJ, hearing**, subject to the following conditions:

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

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



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Chief Commissioner

---

\* The disc of the audio recording of the Article 32, UCMJ, hearing in the record of trial with the court contains sealed and unsealed portions. In his report, the PHO noted the sealed portion is from 32:41–1:38:03.

The court was unable to access any folder or files on the disc marked PHO Exhibit 39. Each attempt to view PHO Exhibit 39 resulted in the following error message: "40. EXPLICIT Video 2, video 164 . . . 138.mp4[.] The disk structure is corrupted and unreadable." The court was able to access intermittently the file on the disc marked PHO Exhibit 40. However, some attempts returned a similar error message as the one described above.

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

<b>UNITED STATES,</b>	)	<b>CONSENT MOTION TO EXAMINE</b>
	)	<b>SEALED MATERIALS</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	4 February 2025

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1, 23.1(b) and 23.3(f)(1) of this Honorable Court’s Rules of Practice and Procedure, undersigned counsel hereby moves this Court to permit appellate counsel for the Appellant and the Government to examine Prosecution Exhibit 8, Preliminary Hearing Officer (PHO) Exhibits 4-6 and 39-40, and the sealed portions of the Article 32, UCMJ 10 U.S.C. § 832 proceedings audio in the above-named case.

**Facts**

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days’ confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

During the Article 32 proceedings for these alleged offenses, the PHO received and attached explicit video and photographic evidence of the named victim related to the Article 117a charges, and took up matters raised under Military Rule of Evidence (M.R.E.) 405(k) that were subsequently sealed pursuant to M.R.E. 412 during the hearing. *PHO Continuation Pages*, pg. 34-35; eROT pg. 246-247. In total, the PHO sealed the following materials pursuant to R.C.M. 405(j)(8) and R.C.M. 1103A:

1. PHO exhibit 4: Screenshots of texts;
2. PHO exhibit 5: Photograph, 1 pg.;
3. PHO exhibit 6: Photograph, 1 pg.;
4. PHO exhibit 39: Video;
5. PHO Exhibit 40: Video, *PHO Report* Pages 1-2, *PHO Continuation Pages*, pg. 1; eROT pg. 212-213; and
6. Article 32 Hearing Audio, Minutes 32:41 through 1:38:03. *PHO Continuation Pages*, pg. 34-35; eROT pg. 246-247.

During the court-martial, the prosecution admitted Prosecution Exhibit 8, a single disk containing two explicit videos and two explicit photographs of the named victim related to the Article 117a charges the Appellant pleaded guilty to. The government and defense counsel stipulated to the admission of this exhibit and labeled it as a “sealed” exhibit on the stipulation of fact. Prosecution Exhibit 1, pg. 15; eROT pg. 74. The military judge does not appear to have ordered the exhibit sealed explicitly, but when Prosecution Exhibit 8 was offered Government counsel described it as a “sealed” exhibit and the Military Judge accepted it into evidence without further discussion. *Transcript* pg.328; eROT pg. 1570. Further, the eROT labels this exhibit as a



sealed exhibit on both the Exhibit List (eROT pg. 57) and on the Prosecution Exhibit 8 filler page. eROT pg. 97.

### **Law**

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

Air Force regulations governing professional duties and conduct of appellate defense counsel impose upon counsel, inter alia, a duty to provide "competent representation," perform "reasonable diligence," and to "give a client his or her best professional evaluation of the questions that might be presented on appeal...[to] consider all issues that might affect the validity of the judgment of conviction and sentence...[to] advise on the probable outcome of a challenge to the conviction or sentence...[and to] endeavor to persuade the client to abandon a wholly frivolous appeal or to eliminate contentions lacking in substance." Air Force Instruction (AFI) 51-110, *Professional Responsibility Program*, Attachment 2: Air Force Rules of Professional Conduct, Rule 1.1, Rule 1.3(11 Dec. 18); AFI 51-110, Attachment 7: Air Force Standards for Criminal Justice, Standard 4-8.3(b).

This Court may grant relief "on the basis of the entire record" of trial. Article 66, UCMJ, 10 U.S.C. § 866. Appellate defense counsel detailed by the Judge Advocate General shall represent accused servicemembers before this Court. Article 70, UCMJ, 10 U.S.C. § 870. This Court's "broad mandate to review the record unconstrained by appellant's assignments of error" does not

reduce “the importance of adequate representation” by counsel; “independent review is not the same as competent appellate representation.” *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998).

### **Analysis**

Sealed PHO exhibits 4-6 and 39-40 and Prosecution Exhibit 8 identified in the fact section above appear to be the explicit images and video which form the foundation for the allegations referred against SrA Wells. The content of the sealed Article 32 hearing audio identified in paragraphs (6) in the fact section above appears to be audio in which a oral defense motion or argument was made pursuant to M.R.E. 405(k) and was subsequently denied by the PHO, but sealed pursuant to R.C.M 412. *PHO Report Continuation Pages*, pg. 35, eROT pg. 893. The PHO exhibits were provided to the parties in advance of the Article 32, UCMJ hearing, and were sealed as part of the Article 32 report. Both Government and Defense counsel were present during the making of the sealed audio portion of the hearing. Further, the admissibility and use of Prosecution Exhibit 8 was stipulated to by both Government and Defense Counsel in advance of the court-martial. Thus, it is evident the parties “presented” and “reviewed” the sealed material.

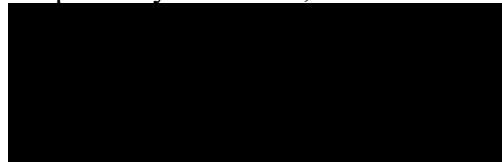
It is reasonably necessary for Appellant’s counsel to review these sealed exhibits and for counsel to competently conduct a professional evaluation of Appellant’s case and to uncover all issues which might afford him relief. To do so, a review of the sealed records introduced and created during the Article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

Because examination of the materials in question is reasonably necessary to the fulfillment of counsel's Article 70, UCMJ duties, and because the materials were made available to the parties at the Article 32, UCMJ, hearing, and prior to Court-Martial Appellant has provided the "colorable showing" required by R.C.M. 1113(b)(3)(B)(i) to permit his counsel's examination of sealed materials and has shown good cause to grant this motion.

The Government consents to both parties viewing the sealed materials detailed above. Undersigned counsel will be at Joint Base Andrews for her annual tour from February 24 to March 7, 2025 and can review the sealed materials at that time.

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

Respectfully submitted,

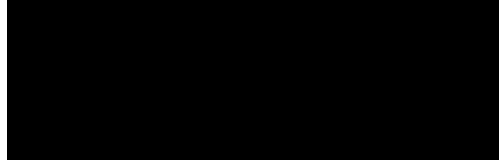


REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

**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 at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 4 February 2025.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(ELEVENTH)</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	28 February 2025

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Damien Wells, Appellant, hereby moves for an enlargement of time to file his assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **7 April 2025**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 382 days have elapsed. On the date requested, 420 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Appellate counsel had not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128b, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

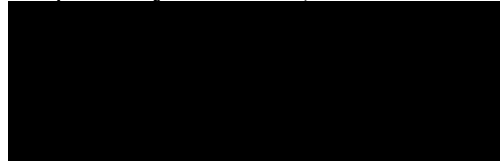
Through no fault of SrA Wells, undersigned counsel has been working on SrA Wells case, but has not yet completed her review of the ROT. Undersigned counsel is a reservist and has a full-time civilian job in the private sector serving clients. She worked on this case during Inactive Duty Training (IDT) days over the last few months, and is currently performing her Annual Tour from 24 February to 7 March 2025. Since the last EOT in this case, counsel has furthered her review of SrA Wells case, filed a motion to examine the sealed material in this case, and conducted that examination. She has also filed a motion to examine sealed materials in *U.S. v. Horton* (ACM 40712) and conducted that examination. While counsel has made substantial progress on her review of SrA Well's case since the last EOT, recent Air Force-wide prohibitions on reservist remote work, whether paid or points-only, have curtailed her ability to further progress her review. She is also currently seeking and awaiting the provision of an obsolete Air Force Instruction that is the subject of the Article 92 charges in the case. This enlargement of time is necessary to allow undersigned counsel to fully review SrA Well's case and advise him regarding potential errors.

SrA Wells was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of the request for an enlargement of time, and (4) agrees with the request for an enlargement of time.

Undersigned counsel currently represents 2 clients, both of which are pending initial brief before this Court. This case is counsel's top priority case overall.

**WHEREFORE**, SrA Wells respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

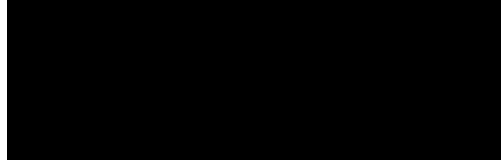
A large black rectangular redaction box covering the signature of Rebecca J. Saathoff.

REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@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 at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 28 February 2025.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil



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

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	3 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 (Eleventh) 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 420 days in length. Appellant's delay—which already exceeds a year—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 4 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

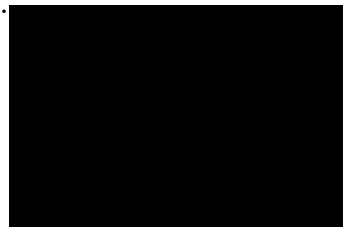
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



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

**CERTIFICATE OF FILING AND SERVICE**

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



F  
Appellate Government Counsel  
Government Trial & Appellate Operations  
1500 W. Perimeter Road, Suite 1190  
Joint Base Andrews, MD  
DSN: 612-4809

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION FOR</b>
<i>Appellee,</i>	)	<b>ENLARGEMENT OF TIME</b>
	)	<b>(TWELTH)</b>
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	27 March 2025

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

Pursuant to Rules 23.3(m)(3) and (6) of this Honorable Court’s Rules of Practice and Procedure, Senior Airman (SrA) Damien Wells, Appellant, hereby moves for an enlargement of time to file his assignments of error. Appellant requests an enlargement for a period of 30 days, which will end on **7 May 2025**. The record of trial was re-docketed with this Court on 12 February 2024. From the date of docketing to the present date, 409 days have elapsed. On the date requested, 450 days will have elapsed.

On 18 December 2023, this Court issued a show cause order directing the Government to show good cause why this Court should not remand the record for correction. On 18 January 2024, this Court *sua sponte* remanded the record of trial to the Chief Trial Judge, Air Force Trial Judiciary, for correction of the entry of judgment and other erroneous post-trial documentation. Appellate counsel had not reviewed the record of trial nor filed a substantive brief or motion in the case prior to this Court remanding it.

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); six specifications of Article 134, UCMJ; one specification of Article 131b, UCMJ; one specification of Article 115, UCMJ; one specification

of Article 92, UCMJ; an additional specification of Article 131b, UCMJ; an additional specification of Article 128, UCMJ; and three additional specifications of Article 92, UCMJ. *Entry of Judgment*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the rank of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

The electronic record of trial is 1,581 pages long comprised of 14 prosecution exhibits, one defense exhibit, six appellate exhibits, and one court exhibit. Appellant is not currently confined.

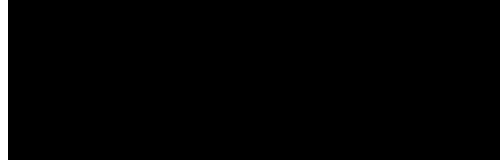
Through no fault of SrA Wells, undersigned counsel has been working on SrA Wells case, but has not yet completed the assignment of errors in the case. Undersigned counsel is a reservist and has a full-time civilian job in the private sector serving clients. Since the last EOT in this case, counsel has received and reviewed the obsolete Air Force Instruction for this case referenced in the last EOT, finished her case file review, advised the Appellant, and used points-only IDTs to begin drafting the Assignment of Errors. She has also performed the second half of her annual tour and conducted the case review in *U.S. v. Moore* (No ACM 40698), including filing a motion to examine sealed material, conducting that examination, and using points-only IDTs to file the Motion to Withdraw and Attach in that case. This enlargement of time is necessary to allow undersigned counsel to further draft SrA Well's Assignment of Errors.

SrA Wells was (1) advised of his right to a timely appeal, (2) provided an update on the status of undersigned counsel's progress on his case, (3) advised of the request for an enlargement of time, and (4) agrees with the request for an enlargement of time.

This is currently counsel's only client, and her top priority.

**WHEREFORE**, SrA Wells respectfully requests that this Honorable Court grant the requested enlargement of time.

Respectfully submitted,

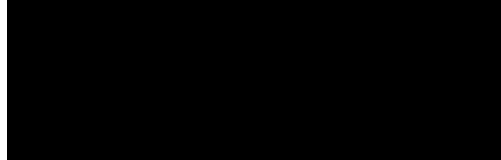


REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

**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 at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 27 March 2025.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

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


UNITED STATES,	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS,</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	31 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 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 450 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 3 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.

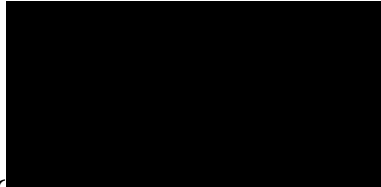


JG [REDACTED] USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800



**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 31 March 2025.



JG [Redacted] 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**

<b>UNITED STATES,</b>	)	<b>BRIEF ON BEHALF OF APPELLANT</b>
	)	
v.	)	
	)	Before Panel No. 2
Senior Airman (E-4)	)	
<b>DAMIEN M. WELLS</b>	)	No. ACM S32762 (f rev)
United States Air Force,	)	
<i>Appellant.</i>	)	5 May 2025

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

**Assignment of Error**

**WHETHER THE ENTRY OF JUDGMENT SHOULD BE CORRECTED TO  
REFLECT THAT APPELLANT WAS FOUND GUILTY OF ARTICLE 128,  
U.C.M.J. RATHER THAN ARTICLE 128B, U.C.M.J.**

**Statement of the Case and Facts**

On 7 July 2023, at a special court-martial convened at Ramstein Air Base, Germany, Appellant was found guilty, consistent with his pleas, of one charge and four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); one charge and six specifications of Article 134, UCMJ; one charge and specification of Article 131b, UCMJ; one charge and specification of Article 115, UCMJ; one charge and specification of Article 92, UCMJ; an additional charge and specification of Article 131b, UCMJ; an additional charge and specification of Article 128, UCMJ; and an additional charge and three specifications of Article 92, UCMJ. *Entry of Judgment (EOJ)*, 9 February 2024. The military judge sentenced Appellant to a reprimand, reduction to the grade of E-1, 345 days' confinement, and a bad-conduct discharge. *Id.* The convening authority took no action on the findings or sentence. *Convening Authority Decision on Action*, 5 September 2023.

Appellant's conviction was entered pursuant to a guilty plea. Originally, Appellant was charged with a different set of charges and specifications than he was convicted of. *Charge Sheet*, 23 February 2023. In relevant part, his original charges included Charge VI, for two specifications of domestic violence in violation of Article 128b, UCMJ, and Charge V, for one specification of abusive sexual contact in violation of Article 120, UCMJ. *Id.* These charges were dismissed as part of the negotiated plea deal. Appellate Ex. III at 1. Pursuant to the plea agreement, the following relevant changes were made to the charges in the case:

1. The Government agreed to withdraw and dismiss the Article 128b charge and its specifications with prejudice to instead handle the underlying conduct through Nonjudicial Punishment, Article 15, UCMJ, and instead refer the additional charge under Article 128. Appellate Ex. III at 2. Consistent with the agreement, the Government withdrew and dismissed the two Article 128b specifications on 7 July 2023. *Charge Sheet*, 23 February 2023.
2. The Government agreed to withdraw and dismiss the Article 120 charge with prejudice, and to re-refer the underlying conduct as an Article 128 offense. Appellate Ex. III at 1-2. Consistent with the plea agreement, the Government referred the Second Additional Charge I and one specification of Article 128. *Additional Charge Sheet*, 28 June 2023 at 1. Appellant subsequently pleaded guilty to the Second Additional Charge I and its specification, consistent with the terms of the plea agreement. R. at 17, 24-31. The Military Judge accepted his plea, and the Government withdrew and dismissed the Article 120 charge and specification with prejudice on 7 July 2023. *Charge Sheet*, 23 February 2023.

However, upon completion of the EOJ, the Second Additional Charge I was still listed as a domestic violence Charge under Article 128b (*EOJ* at 11), instead of a battery upon a spouse, Article 128, offense (although the correct specification was listed). This error remained even after the Government was subsequently directed to correct other errors identified by this Honorable Court. Order, *United States v. Wells*, No. ACM S32762 (A.F. Ct. Crim. App. Jan. 18, 2024); *Corrected EOJ* at 11.

### **Law**

The EOJ “reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders.” Rules for Courts-Martial (R.C.M.) 1111(a)(2). It “terminates the trial proceedings and initiates the appellate process.” *Id.* The EOJ must accurately reflect the findings and disposition of each charge and specification referred to the court-martial. R.C.M. 1111(b). This Court has authority to “modify a judgment in the performance of their duties and responsibilities,” including to correct errors in the EOJ. R.C.M. 1111(c); *United States v. Mejia*, No. ACM 40497, 2025 CCA LEXIS 18, at \*12-13 (A.F. Ct. Crim. App. Jan. 16, 2025) (citations omitted) (pet. granted). Further, “a record of trial found to be incomplete or defective before or after certification may be corrected to make it accurate.” R.C.M. 1112(d)(2). “A superior competent authority may return a record of trial to the military judge for correction under this rule.” *Id.*

This Court has also previously directed the Air Force Trial Judiciary on remand to correct errors in the EOJ, including when the EOJ incorrectly reflected matters such as adjudged forfeitures, and spelling errors. *See United States v. Goldman*, No. ACM 39939, 2022 CCA LEXIS 43, at \*13-14 (A.F. Ct. Crim. App. Jan. 20, 2022).

## Argument

Appellant's guilty plea to a charge of battery on a spouse under Article 128 was incorrectly reflected on the EOJ as a guilty plea to domestic violence under Article 128b. Appellant is entitled to accurate court documents under R.C.M. 1111, including an EOJ that correctly reflects his pleas, and the terms of his plea agreement. By virtue of this alone, there is justification for this Honorable Court to order the EOJ to be corrected.

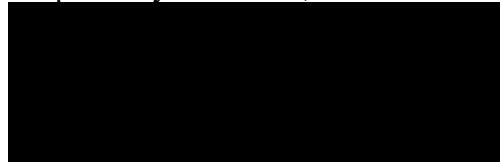
However, to the extent that prejudice is required to warrant correction, *see, e.g., United States v. Mariano*, No. 202000175, 2021 CCA LEXIS 214 (N-M. Ct. Crim. App. 2021) (per curiam) (citing *United States v. Crumpley*, 49 M.J. 538, 539 (N-M. Ct. Crim. App. 1998)) ("Although we find no prejudice, Appellant is entitled to have court-martial records that correctly reflect the content of his proceeding."), Appellant also stands to be prejudiced by this error. The consequences for a domestic violence conviction go beyond the impacts of the sentence announced in court; those convicted of such crimes also face potential difficulties finding employment, social isolation, difficulties finding housing, and potentially even impacts on their custodial and visitation rights to see their children. Rahul Ranjan, *The Long Term Consequences of a Domestic Violence Conviction*, THE LAW BRIGADE PUBLISHERS (Oct. 21, 2021), <https://thelawbrigade.com/general-research/the-long-term-consequences-of-a-domestic-violence-conviction/>; *see also* 18 U.S.C. § 922(g)(8) (specifically prohibiting individuals convicted of even misdemeanor domestic violence offenses from, among other things, possessing a firearm). Thus, Appellant is prejudiced and harmed by this error, and correction is warranted.

Further, the terms of the plea agreement appear to reflect an intention of the parties to avoid charges that fall under Article 128b (including dismissal of the original Article 128b charge and its specifications, and the re-referral of the original Article 120 allegation as an Article 128, not as

an Article 128b). Given this characterization assists in alleviating not only the societal stigma listed above, but also the risk of a higher sentence, this is a benefit inured to the Appellant under the plea agreement that he is entitled to reap the benefits of because he fulfilled his half of the deal. Correcting the EOJ is necessary to ensure the Appellant receives the benefits of his plea agreement.

**WHEREFORE**, Appellant respectfully requests that this Honorable Court order the EOJ in his case be corrected to accurately reflect the charges of which he was found guilty. Alternatively, Appellant asks this Honorable Court to remand this case to the Air Force Trial Judiciary for correction of the EOJ.

Respectfully submitted,

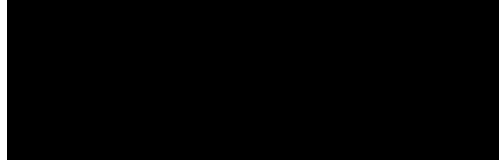


REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

**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 at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on 5 May 2025.

Respectfully submitted,



REBECCA J. SAATHOFF, Maj, USAF  
Appellate Defense Counsel  
Air Force Appellate Defense Division  
1500 West Perimeter Road, Suite 1100  
Joint Base Andrews NAF, MD 20762-6604  
Office: (240) 612-4770  
Email: rebecca.saathoff.2@us.af.mil

<b>UNITED STATES,</b>	)	<b>UNITED STATES’</b>
<i>Appellee,</i>	)	<b>ANSWER TO ASSIGNMENTS</b>
	)	<b>OF ERROR</b>
v.	)	
	)	No. ACM S32762 (f rev)
Senior Airman (E-4)	)	
<b>DAMIEN W. WELLS,</b>	)	Before Panel 2
United States Air Force	)	
<i>Appellant.</i>	)	3 June 2025

## ISSUE PRESENTED

## STATEMENT OF THE CASE

Consistent with his pleas, Appellant was convicted of one charge and four specifications of Article 117a, Uniform Code of Military Justice (UCMJ); one charge and six specifications of Article 134, UCMJ; one charge and specification of Article 131b, UCMJ; one charge and specification of Article 115, UCMJ; one charge and specification of Article 92, UCMJ; an additional charge and specification of Article 131b, UCMJ; an additional charge and specification of Article 128, UCMJ; and an additional charge and three specifications of Article 92, UCMJ. (*Entry of Judgment* (EOJ), ROT, Vol. 1; R. at 234-35.) Appellant was sentenced to a reprimand, reduction to E-1, 345 days' confinement, and a bad conduct discharge. (*Id.*) The convening authority took no action on the findings but waived automatic forfeitures for a period



of six months for the benefit of Appellant’s spouse and child. (*Convening Authority Decision on Action*, dated 5 September 2023, ROT, Vol. 1.)

### **STATEMENT OF FACTS**

On 18 January 2024, this Court remanded the record of trial to the Air Force Trial Judiciary for “correction of the entry of judgment and other erroneous post-trial documentation.” (*United States v. Wells*, No. ACM S32762 (A.F. Ct. Crim. App. Jan 18, 2024).) The corrected record of trial was returned to this Court on 12 February 2024. (*JAJM Memorandum*, dated 12 February 2024.) Upon receipt of the corrected version of these documents, Appellant identified an additional error that was not previously noted or addressed. (App. Br. at 3.)

Specifically, the corrected Entry of Judgment (EOJ) and Statement of Trial Results (STR) reflect that “Second Additional Charge I” contained a specification under Article 128b, a domestic violence offense, and records Appellant’s plea to that offense as guilty. (*Corrected EOJ* at 11; *Corrected STR* at 11.) By contrast, both the plea agreement reached on 28 June 2023 and the Charge Sheet setting forth the Second Additional Charge I characterize the underlying conduct as an assault offense under Article 128. (*Charge Sheet*, dated 28 June 2023, ROT, Vol. 1; App. Ex. III at 1.)

### *Charging Background*

On 23 February 2023, the Appellant was served with one charge and four specifications under Article 117a, UCMJ, one charge and ten specifications under Article 134, UCMJ, one charge and one specification under Article 131b, one charge and one specification under Article 115, UCMJ, and one charge and two specifications under Article 128b. (*Charge Sheet*, dated 23 February 2023, ROT, Vol. 1.) Two additional specifications were later preferred against Appellant under Article 92 (Additional Charge I) and Article 131b (Additional Charge II),

respectively. (*Charge Sheet*, dated 24 April 2023, ROT, Vol. 1.) The same five charges and 15 total specifications were referred to a special court-martial on 14 June 2023 under Special Order AB-5, pursuant to a plea offer submitted by Appellant.<sup>1</sup> (Id.)

On 28 June 2023, Appellant submitted his second offer for plea agreement. (App. Ex. III.) Appellant's revised offer, in relevant part, proposed that he would plead guilty to an offense under Article 128 for the conduct that previously formed the basis for Charge V. (Id. at 1-2.) Rather than pleading guilty to abusive sexual contact, as originally alleged in Charge V's specification, Appellant specifically agreed that he would plead guilty to an assault consummated by a battery against his then-spouse under Article 128. (Id.) These terms also modified and replaced Appellant's prior agreement that he would plead guilty to a domestic violence offense, under Article 128b, in lieu of the Article 120 specification described in Charge V. (*Offer for Plea Agreement*, dated 14 June 2023, at 1, ROT, Vol. 1.)

On 28 June 2023, four additional specifications were preferred and referred against Appellant, one under Article 128 (Second Additional Charge I) and three under Article 92 (Second Additional Charge II). (*Charge Sheet*, dated 28 June 2023, ROT, Vol. 1.) The following day, the convening authority referred these charges to the special court-martial previously convened under Special Order AB-5. (Id.)

---

<sup>1</sup> The original Offer for Plea Agreement, submitted and accepted on 14 June 2023, was later superseded by an Offer for Plea Agreement submitted and accepted on 28 June 2023. (App. Ex. III.) The offer submitted on 14 June 2023, in relevant part, proposed withdrawal and dismissal of Charge II, Specification 7 and Charge V and its single specification with prejudice. (*Offer for Plea Agreement*, dated 14 June 2023, at 1, ROT, Vol. 1.) In lieu of the Article 120 offense specified in Charge V, the Appellant proposed that the government instead bring an additional charge under Article 128b for the underlying conduct. (Id.) This proposed charge eventually became referred to as "Second Additional Charge I."

Appellant was arraigned on 5 July 2023. (R. at 15-17.) At that hearing, he entered his pleas consistently with the 28 June 2023 agreement. (Id.) The government also withdrew and dismissed certain charges and specifications, in line with the plea agreement's terms. (R. at 234-38; App. Ex. III.) Concerning the Second Additional Charge I, the following exchange occurred:

MJ: Okay. What I'm going to do now is go to the Second Additional Charge I and your counsel will direct you there.

ACC: Yes, Your Honor.

MJ: Okay, in the specification of the Second Additional Charge I, you are charged with battery upon a spouse or an intimate family member, in violation of Article 128, battery upon a spouse, UCMJ.

By pleading guilty to this offense, you are admitting that the following elements are true and accurately describe what you did: that, between on or about 1 July 2020 and on or about 31 July 2020, you did bodily harm to [VD], by pinching and flicking the breast of [VD] with your fingers; two, the bodily harm was done unlawfully; three, the bodily harm was done with force or violence; and, four, that [VD] was then your spouse.

[Discussion of definitions omitted.]

MJ: Do you understand that your plea of guilty admits that these elements accurately describe what you did?

ACC: Yes, Your Honor.

(R. at 24-25.) After thorough inquiry into each specification, the military judge accepted Appellant's pleas as entered and adjudged a sentence. (R. at 234-38.)

## **ARGUMENT**

**THIS COURT SHOULD CORRECT THE EOJ TO REFLECT THAT “SECOND ADDITIONAL CHARGE I” WAS REFERRED UNDER ARTICLE 128, RATHER THAN ARTICLE 128b AND THAT APPELLANT’S PLEA OF GUILTY WAS TO AN ARTICLE 128 OFFENSE.**

### ***Standard of Review***

The proper completion of post-trial processing is a question of law this Court reviews de novo. United States v. Zegarrundo, 77 M.J. 612 (A.F. Ct. Crim. App. 2018) (citing United States v. Kho, 54 M.J. 64 (C.A.A.F. 2000)).

### ***Law and Analysis***

The government agrees that the EOJ erroneously fails to reflect the referred offense labeled “Second Additional Charge I,” and the disposition thereof. Likewise, the government concurs that corrective action should be taken. Specifically, for Second Additional Charge I, this Court should amend the EOJ to change the text in the column for “Arraigned Offenses” from “Art 128b” to “Art 128.” (*EOJ* at 11, ROT, Vol. 1; *STR* at 11, ROT, Vol. 1.)

Appellate courts are granted authority under R.C.M. 1111(c)(2) to modify judgments in the performance of their duties and responsibilities. This authority has been exercised in several cases. For example, in United States v. Stanford, No. ACM. 40327, 2024 CCA LEXIS 77 (A.F. Ct. Crim. App. Feb. 14, 2024) (unpub. op.), this Court exercised its authority under R.C.M. 1111(c)(2) and modified the EOJ, which inaccurately recorded the exceptions and substitutions that constituted the military judge’s findings, rather than remanding the case for correction. And even more similar to this case, in United States v. Welsh, No. ACM S32719 (f rev), 2023 CCA LEXIS 157 (A.F. Ct. Crim. App. Apr. 6, 2023) (unpub. op.), this Court noted that the EOJ cited

an arraigned offense as “Art. 128a” rather than “Article 128” and elected to avoid remand by appropriately modifying the EOJ.

Here, this Court has sufficient information before it to make the appropriate adjustments without the need to remand for clerical corrective action. First, the record establishes the convening authority’s and trial counsel’s intent to withdraw and dismiss the original charges and specifications under articles 120 and 128b, respectively (Charges V and VI). (See *Charge Sheet*, dated 23 February 2023, at 5, ROT, Vol. 1.) The record further demonstrates, through the Appellant’s second offer for plea agreement, that Appellant intended to plead guilty only to an offense under Article 128, rather than 128b, for the conduct underlying Second Additional Charge I. (App. Ex. III at 1.) Then, the convening authority accepted that offer as written. (Id.) This plea agreement was drafted to supersede and void any prior agreements. (Id. at 7.) Perhaps most importantly, the Charge Sheet reflects that the relevant specification was preferred and referred under Article 128, not Article 128b. (*Charge Sheet*, dated 28 June 2023, ROT, Vol. 1.)

Finally, it is also clear from the trial transcript that the military judge understood that the charge was brought under Article 128 for “battery of a spouse,” rather than Article 128b. (R. at 24.) He specifically stated, “in the specification of the Second Additional Charge I, you are charged with battery upon a spouse or an intimate family member, in violation of Article 128, battery upon a spouse, UCMJ.” (Id.) The military judge then read the correct elements of the Article 128 offense, and Appellant’s responses during the plea colloquy established the factual basis for the offense charged as Second Additional Charge I. (R. at 24-25.)

In sum, while the similarity of the two offenses, several charge sheets, and multiple plea agreements reached in this case may help explain the oversight, no reasonable question exists concerning the charge which should be reflected on the EOJ. For these reasons, the government

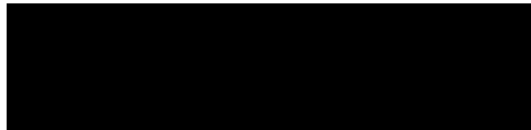
concur with Appellant's Assignment of Error and respectfully requests that this Court exercise its authority to modify the judgment as described above. *See* R.C.M. 1111(c)(2).

### **CONCLUSION**

For these reasons, the United States respectfully requests that this Honorable Court grant the Appellant's request and appropriately modify the EOJ to accurately reflect the referred charges and respective plea.



MORGAN L. BREWINGTON, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800



MARY ELLEN PAYNE  
Associate Chief  
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 the Air Force  
Appellate Defense Division on 3 June 2025.



MORGAN L. BREWINGTON, Capt, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
United States Air Force  
(240) 612-4800