IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, *Appellee*, v. **ALEX J. MEJIA** Staff Sergeant (E-5), United States Air Force, *Appellant*.	**SUPPLEMENT TO PETITION FOR GRANT OF REVIEW** USCA Dkt. No. 25-_____/AF Crim. App. No. 40497

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Issue Presented

As applied to Staff Sergeant Mejia, whether 18 U.S.C. § 922 is constitutional in light of recent precedent from the Supreme Court of the United States.

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d).[1] This Court may exercise jurisdiction pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

[1] All references to the punitive articles are to the versions in the *Manual for Courts-Martial*, United States (2019 ed.) (*MCM*); all other references to the UCMJ and references to the Rules for Courts-Martial (R.C.M.) are to the 2023 *MCM* version.

Statement of the Case

On March 8, 2023, a military judge sitting as a general court-martial convicted Staff Sergeant (SSgt) Alex J. Mejia, consistent with his pleas, of three specifications involving child pornography (possession, viewing, and distribution), and two specifications of communicating indecent language, in violation of Article 134, UCMJ, 10 U.S.C. § 934.[2] The military judge sentenced SSgt Mejia to a dishonorable discharge, twelve months' confinement, reduction to the grade of E-1, and a reprimand.[3] The convening authority took no action on the findings but deferred the reduction of grade until entry of judgment (EOJ) and waived automatic forfeitures for six months.[4]

SSgt Mejia appealed his conviction pursuant to 10 U.S.C. § 866(b)(1)(A). At the AFCCA, SSgt Mejia raised whether the firearm bar contained in his record of trial was constitutional as applied to him.[5] On January 16, 2025, the AFCCA affirmed the findings as correct in law and fact and denied relief on the firearm issue.[6]

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[2] R. at 106.
[3] R. at 208.
[4] Convening Authority Decision on Action Memorandum, June 2, 2023.
[5] *United States v. Mejia,* No. ACM 40497, slip op. at 2 (A.F. Ct. Crim. App. Jan. 16, 2025) (Appendix A).
[6] *Id.* at 2.

Statement of Facts

SSgt Mejia pleaded guilty to wrongful possession of, viewing, and distributing child pornography, and communicating indecent language.[7] The military judge accepted SSgt Mejia's plea and found him guilty.[8] After his conviction, the Government determined that SSgt Mejia's conviction qualified for a firearms prohibition under 18 U.S.C. § 922, without specifically identifying the relevant provision.[9] The Government marked "Yes" on "Firearm Prohibition Triggered" on the Staff Judge Advocate's (SJA) indorsement to the EOJ.[10] The SJA's indorsement was not an attachment listed on the EOJ, but a separate document that became the fourth page of the EOJ.[11]

SSgt Mejia challenged the firearm prohibition before the AFCCA.[12] He argued that 18 U.S.C. § 922 was unconstitutional as applied to him, that the AFCCA had jurisdiction under Article 66, UCMJ, and he asked for the AFCCA to correct the EOJ.[13] The AFCCA concluded the issue "warrant[s] neither discussion nor relief."[14]

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[7] R. at 13, Entry of Judgment (EOJ), June 15, 2023.
[8] R. at 106.
[9] 1st Ind., EOJ, June 15, 2023.
[10] *Id*.
[11] *Id*.
[12] Br. on Behalf of Appellant at 13-19.
[13] *Id*.
[14] Appendix A at 2.

Reasons to Grant Review

This Court should grant review of this case as a trailer to *United States v. Johnson*, which is considering the same firearm prohibition issue along with preliminary questions of jurisdiction and standing.[15] SSgt Mejia's case involves all the same questions, which remain unresolved by the AFCCA and this Court after *United States v. Williams*.[16]

The AFCCA had jurisdiction[17] to consider the post-trial processing error under Article 66(d)(2), UCMJ, which provides that the AFCCA "may provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record . . . ."[18] Raising and correcting the firearm prohibition error is possible because of the timing and presence of the 18 U.S.C. § 922 prohibition in the EOJ. Unlike the Army, the Air Force completes its final 18 U.S.C. § 922 indexing after the EOJ, which it then incorporates into the

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[15] Order Granting Review, *United States v. Johnson*, No. 24-0004/SF, 2024 CAAF LEXIS 561 (C.A.A.F. Sept. 24, 2024).
[16] *Williams*, __ M.J. __, No. 24- 0015, 2024 CAAF LEXIS 501 (C.A.A.F. Sept. 24, 2024).
[17] Jurisdiction to review a case has two separate but related parts: first, whether there is jurisdiction over the case, and second, whether there is authority to act. *Williams*, __ M.J. __, 2024 CAAF LEXIS 501, at *8. The jurisdictional question here concerning the AFCCA is focused on authority to act.
[18] 18 U.S.C. § 866(d)(2).

judgment itself.[19] As a result, SSgt Mejia's case is factually distinct from *Williams*.[20] Because the firearm prohibition occurs after the EOJ, the AFCCA had the authority to act and provide appropriate relief for the error SSgt Mejia raised. However, the AFCCA concluded the issue "warrant[s] neither discussion nor relief."[21]

Because the AFCCA denied relief on whether 18 U.S.C. § 922 was constitutionally applied to SSgt Mejia, this Court has jurisdiction to review and act upon the firearm prohibition in the EOJ.[22] This is because the SJA's indorsement containing the firearm prohibition is part of the military judge's judgment (the EOJ) as required by statute, the R.C.M.s, and regulation.[23] And by denying relief, the AFCCA "affirmed" the judgment.[24]

As this Court determined in *Williams*, this Court can act on the Statement of Trial Results (STR) in the EOJ.[25] Like the STR, the firearm prohibition in the indorsement is a required part of the EOJ.[26] Thus, like the STR in *Williams*, the indorsement here is in the judgment, which this Court can act upon under Article

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[19] Article 60c, UCMJ, 10 U.S.C. § 860c; Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, ¶¶ 20.41, 29.32, 29.33 (Apr. 14, 2022) (Appendix B).
[20] *Cf. Williams*, 2024 CAAF LEXIS 501, at *13-15 (discussing how the Army's firearm prohibition indexing precedes the EOJ because it is only in the STR).
[21] Appendix A at 2.
[22] Article 67(c)(1)(B), UCMJ.
[23] Article 60c, UCMJ; R.C.M. 1111(b)(3)(F); Appendix B at ¶¶ 20.41, 29.32.
[24] Article 67(c)(1)(B), UCMJ.
[25] *Williams*, 2024 CAAF LEXIS 501, at *10.
[26] *Id*. (citing Article 60c(a)(1)(A), UCMJ); Appendix B at ¶ 20.41.

67(c)(1)(B), UCMJ. Because this Court independently has jurisdiction and authority to act, this Court should grant review because the Government's indexing violates the Second Amendment.[27]

Specifically, the Government has not demonstrated how permanently barring SSgt Mejia from ever owning a firearm is "consistent with the Nation's historical tradition of firearm regulation."[28] The historical tradition took a narrow view of firearm regulation for criminal acts than that reflected in 18 U.S.C. § 922:

> [A]ctual "longstanding" precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment to the extent that . . . its basis credibly indicates a present *danger that one will misuse arms against others and the disability redresses that danger*.[29]

Prior to 1961, "the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a 'crime of violence.'"[30] Earlier, the Uniform Firearms Act of 1926 and 1930 stated that "a person convicted of a 'crime of violence' could not 'own or have in his possession or under his control, a pistol or revolver.'"[31] A "crime of violence" meant "committing or attempting to commit murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery,

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[27] *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022); C.A.A.F. R. 21(b)(5)(B)(ii).
[28] *Bruen*, 597 U.S. at 24.
[29] C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun*, 32 HARV. J.L. & PUB. POL'Y 695, 698 (2009) (emphasis added).
[30] *Id.* at 699.
[31] *Id*. at 701.

larceny, burglary, and housebreaking."[32] SSgt Mejia's offense falls short of these.

The Supreme Court recently addressed the validity of 18 U.S.C. § 922(g)(8)(C)(i), which applies once a court finds a defendant "represents a credible threat to the physical safety" of another and issues a restraining order.[33] The Supreme Court concluded that the historical analysis supported the proposition that when "an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed."[34]

But the historical analogue breaks down when applied here. In *Rahimi*, the Supreme Court noted that the "surety" and "going armed laws" supporting a restriction involved "whether a particular defendant likely would threaten or had threatened another with a weapon."[35] The Supreme Court also noted that surety bonds were of limited duration, similar to how 18 U.S.C. § 922(g)(8) only applies while a restraining order is in place.[36] Additionally, the majority pointed out that 18 U.S.C. § 922(g)(8) "involved judicial determinations," comparable to the historical surety laws' "significant procedural protections."[37]

By contrast, this case never involved a threat with a weapon, was devoid of

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[32] *Id.* at 701 (cleaned up).
[33] *United States v. Rahimi*, 602 U.S. 680, 688 (2024).
[34] *Id*. at 698.
[35] *Id*. at 699.
[36] *Id*.
[37] *Id*. at 696, 699.

any procedural protection at the time the firearm prohibition was imposed, and the firearm prohibition under 18 U.S.C. § 922(g)(1) (the only possible applicable category) will last forever. Ultimately, the Supreme Court itself noted the limited nature of its holding: "[W]e conclude only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."[38] Such a narrow holding cannot support the broad restriction encompassed here. This Court should grant review so it can correct this error of constitutional magnitude.[39]

Respectfully submitted,

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[38] *Rahimi*, 602 U.S. at 702.
[39] C.A.A.F. R. 21(b)(5)(A).

Certificate of Compliance with Rules 24(b), and 37

This supplement complies with the type-volume limitation of Rule 24(b) because it contains 1957 words. This supplement complies with the typeface and type style requirements of Rule 37.

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Certificate of Filing and Service

I certify that an electronic copy of the foregoing was electronically sent to the Court and served on the Air Force Government Trial and Appellate Operations Division (AF.JAJG.AFLOA.Filng.Workflow@us.af.mil) on March 7, 2025.

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Appendix A

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

No. ACM 40497

UNITED STATES
Appellee

v.

Alex J. MEJIA
Staff Sergeant (E-5), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 16 January 2025

Military Judge: Jennifer E. Powell.

Sentence: Sentence adjudged 8 March 2023 by GCM convened at Osan Air Base, Republic of Korea. Sentence entered by military judge on 15 June 2023: Dishonorable discharge, confinement for 12 months, reduction to E-1, and a reprimand.

For Appellant: Major Matthew L. Blyth, USAF; Major Spencer R. Nelson, USAF.

For Appellee: Lieutenant Colonel J. Peter Ferrell, USAF; Major Vanessa Bairos, USAF; Major Brittany M. Speirs, USAF; Major Jocelyn Q. Wright, USAF, Mary Ellen Payne, Esquire.

Before RICHARDSON, MASON, and KEARLEY, *Appellate Military Judges*.

Judge KEARLEY delivered the opinion of the court, in which Senior Judge RICHARDSON and Judge MASON joined.

KEARLEY, Judge:

A military judge sitting as a general court-martial convicted Appellant, in accordance with his pleas and pursuant to a plea agreement, of three specifications involving child pornography (possession, viewing, and distribution), and two specifications of communicating indecent language, all in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.[1] Appellant was sentenced to a dishonorable discharge, confinement for 12 months, reduction to the grade of E-1, and a reprimand. The convening authority took no action on the findings, and deferred Appellant's reduction in rank until the date the military judge signed the entry of judgment (EoJ).[2]

Appellant raises six issues on appeal: (1) whether Appellant's sentence is inappropriately severe; (2) whether this court should strike an inaccurate portion of the convening authority's reprimand; (3) whether the military judge erroneously inserted a later effective date for deferment of rank reduction into the EoJ; (4) whether omissions in the record of trial require relief or remand for correction; (5) whether the 18 U.S.C. § 922 firearm prohibition recorded on the first indorsements to the Statement of Trial Results (STR) and EoJ is unconstitutional as applied to Appellant; and (6) whether a plea agreement requiring at minimum a bad-conduct discharge renders the sentencing proceeding an "empty ritual" and thus violates public policy.[3]

We have carefully considered issues (5) and (6) and conclude they warrant neither discussion nor relief. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

As to issues (2) and (3), the Government agrees with Appellant that the convening authority's reprimand should be corrected and Appellant's EoJ should be corrected to reflect the correct dates of the deferment of Appellant's reduction in rank. We direct modification of the EoJ in our decretal paragraph pursuant to our authority under Rule for Courts-Martial (R.C.M.) 1111(c)(2).

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[1] Unless otherwise noted, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.).

[2] The convening authority denied Appellant's request for suspension or deferment of all automatic forfeitures until the entry of judgment. The convening authority waived automatic forfeitures for a period of six months, or release from confinement, or expiration of term of service, whichever is sooner, with the waiver commencing 14 days after the sentence was adjudged and directed that the total pay and allowances be paid to Appellant's spouse.

[3] Appellant raised this last issue pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

As to the remaining issues, we find no error materially prejudicial to Appellant's substantial rights and affirm the findings and sentence as modified.

I. BACKGROUND

On or about 21 May 2017, Appellant created an account on a microblogging and social networking platform. In November 2019, while stationed at Spangdahlem Air Base, Germany, Appellant used that platform to possess and view child pornography on his cell phone. Appellant also uploaded to his account and distributed two videos and one photo of child pornography on the platform. During this timeframe, Appellant also sought out child pornography and used his account to send indecent messages to other users of the same platform. In these messages, Appellant discussed sexually abusing children.

Appellant entered into a voluntary plea agreement with the convening authority, and agreed to plead guilty to three specifications involving child pornography—distributing, possessing, and viewing—in violation of Article 134, UCMJ. Appellant also agreed to plead guilty to two specifications involving indecent language, also in violation of Article 134, UCMJ. As part of the plea agreement, Appellant agreed to "waive all waivable motions." At trial, the military judge confirmed that Appellant did so to receive the benefit of his plea agreement. Also at trial, Appellant's counsel identified motions he would have made but for that provision in the plea agreement, and suppression of a search was not among them.

In exchange for his guilty pleas, Appellant received a limit on the sentence that could be imposed. The terms of the agreement required the military judge to adjudge a punitive discharge of at least a bad-conduct discharge and adjudge a total sentence to confinement between 3 and 12 months. Additionally, the plea agreement prohibited adjudged forfeitures. Based on Appellant's guilty pleas alone, without the plea-agreement sentence limitations, the maximum punishment authorized by law was reduction to the grade of E-1, forfeiture of all pay and allowances, confinement for 41 years, and a dishonorable discharge.

II. DISCUSSION

A. Omissions from the Record of Trial

Appellant asserts that two items were omitted from the record of trial: an Article 30a, UCMJ, 10 U.S.C. § 830a, proceeding, and Appellant's request for waiver of all automatic forfeitures. Appellant argues that the two omissions require relief or remand for correction. We disagree.

1. Additional Background

An Article 30a, UCMJ, proceeding was held on 9 April 2022. The record of the Article 30a, UCMJ, proceeding was not included in the record of trial. The Government, in a motion to attach filed simultaneously with their answer to Appellant's assignments of error, provided this court with copies of the missing documents pertaining to the Article 30a, UCMJ, proceeding. On 12 September 2024, this court granted the Government's unopposed request to attach the documents.

Next, Appellant asserts that his request for waiver of automatic forfeitures was missing from the record of trial. The record of trial includes a memorandum titled Convening Authority Decision on Action, dated 2 June 2023. The memorandum states, "This Convening Authority Decision on Action replaces my previous memos in this case, dated 24 April 2023 and 27 April 2023."[4] The convening authority's decision on action states that he considered Appellant's waiver request for all automatic forfeitures, and he granted this request for a period of six months, or release from confinement, or expiration of term of service, whichever is sooner, with the waiver commencing 14 days after the sentence was adjudged. The forfeiture of all pay and allowances was directed to be paid to Appellant's spouse for her benefit.

2. Law

A complete record of the proceedings, including all exhibits, must be prepared for any general court-martial that results in a punitive discharge or more than 12 months of confinement. Article 54(c)(1), UCMJ, 10 U.S.C. § 854(c)(1); R.C.M. 1103(b)(2). Whether a record of trial is complete is a question of law we review de novo. *United States v. Davenport*, 73 M.J. 373, 376 (C.A.A.F. 2014) (citation omitted).

"[A] substantial omission renders a record of trial incomplete and raises a presumption of prejudice that the [G]overnment must rebut." *United States v. Harrow*, 62 M.J. 649, 654 (A.F. Ct. Crim. App. 2006) (citation omitted), *aff'd*, 65 M.J. 190 (C.A.A.F. 2007). However, "[i]nsubstantial omissions from a record of trial do not raise a presumption of prejudice or affect that record's characterization as a complete one." *United States v. Henry*, 53 M.J. 108, 111 (C.A.A.F. 2000). We approach the question of what constitutes a substantial omission on a case-by-case basis. *United States v. Abrams*, 50 M.J. 361, 363 (C.A.A.F. 1999) (citation omitted). "In assessing . . . whether a record is complete . . . the threshold question is 'whether the omitted material was

[4] These memoranda are not in the record of trial.

"substantial," either qualitatively or quantitatively.'" *Davenport*, 73 M.J. at 377 (quoting *United States v. Lashley*, 14 M.J. 7, 9 (C.M.A. 1982)) (additional citation omitted). Omissions from the record are "qualitatively substantial if the substance of the omitted material 'related directly to the sufficiency of the Government's evidence on the merits,' . . . ." *Id.* (quoting *Lashley*, 14 M.J. at 9). "Omissions are quantitatively substantial unless 'the totality of omissions . . . becomes so unimportant and so uninfluential when viewed in the light of the whole record, that it approaches nothingness.'" *Id.* (omission in original) (quoting *United States v. Nelson*, 3 C.M.A. 482, 486 (1953).

A record of a proceeding under Article 30a, UCMJ, "shall be included in the record of trial" if the charges are referred to trial. R.C.M. 309(e). R.C.M. 1112(b) lists what the record of trial in every general and special court-martial shall include. R.C.M. 1112(f) lists items to be attached to the record of trial for appellate review. Neither a record of an Article 30a, UCMJ, proceeding nor a forfeiture waiver request is one of the required items.[5]

3. Analysis

As a result of this court's granting the Government's motion to attach the documents associated to the Article 30a, UCMJ, proceeding, we reviewed the documents. The proceeding included an application for a search warrant which was granted by a military judge. It appears the Article 30a, UCMJ, proceeding led to the referral of charges, and therefore the record of the proceeding should have been included in the record of trial. *See* R.C.M. 309(e).

We next consider whether we find this to be a substantial omission; we do not. At trial, Appellant waived any motion regarding the search and seizure of his account. On appeal, Appellant did not oppose the Government's motion to attach the proceedings, nor further address this issue in its reply to the Government's answer to Appellant's assignments of error. Assuming *arguendo* it was a substantial omission, we discern no prejudice.

Turning to the waiver request, Appellant acknowledges that a waiver request is not required to be part of the record of trial nor is such request required

[5] However, s*ee* Exec. Order No. 14,130, 89 Fed. Reg. 105343, 105360 (20 Dec. 2024), where, effective 20 December 2024, R.C.M. 1112(f)(1) is modified to read as follows: "A copy of all materials required to be provided to the military judge pursuant to R.C.M. 309(a)(3)" shall be attached to the record of trial.

to be attached to the record of trial. As such, it was not an omission under R.C.M. 1112, much less a substantial omission.[6]

Therefore, in regard to both the record of the Article 30a, UCMJ, proceeding and Appellant's waiver request, we are not persuaded any correction is required. We find no substantial omission and no relief is warranted. Further, we were able to review the documents related to the proceeding now attached to the record of trial, and have been able to complete our Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's court-martial.

B. Convening Authority's Reprimand

Appellant requests that this court set aside the convening authority's reference to Appellant's noncommissioned officer status in the reprimand. The Government recommends we modify the convening authority's reference to Appellant's rank as a noncommissioned officer. We agree and order modification in our decretal paragraph.

1. Additional Background

The convening authority issued the following reprimand:

> [Appellant] is reprimanded as follows: You are hereby reprimanded! Your decision to willingly and knowingly possess and distribute images and videos depicting sexual abuse and exploitation of children is appalling and violates all standards of human decency. You continuously exchanged indecent comments, professing your desire to participate in sexual acts with minors. Not only is your egregious conduct a significant departure from the standards expected of all members of society, but worse, your misconduct violated the high values and standards expected of you as a *non-commissioned officer* and member of the United States Air Force. You have disgraced yourself and brought discredit upon this great service with the reprehensible misconduct you committed when you thought no one was watching. I hope this conviction causes you to truly appreciate the severity of your actions and serves as a catalyst for you to take the steps necessary to be a productive member of society.

(Emphasis added).

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[6] Additionally, we note no prejudice; Appellant's waiver request was *granted* for a period of six months for the benefit of Appellant's spouse.

The record indicates Appellant was a senior airman at the time he committed the offenses in November 2019. He was promoted to staff sergeant on 1 December 2020. Appellant did not file a post-trial motion for correction of the EoJ. R.C.M. 1003(b)(1).

2. Law and Analysis

As part of sentence appropriateness review, this court determines whether a reprimand is appropriate under a de novo standard. *United States v. McAlhaney*, 83 M.J. 164, 166 (C.A.A.F. 2023).

While Appellant was a staff sergeant at the time of trial in 2023, the parties agree that Appellant was a senior airman, and therefore not a noncommissioned officer, at the time he committed the offenses.

Even when an appellant does not claim prejudice from an error in the reprimand, we are constrained by Article 66(d)(1), UCMJ, to only approve sentences that are correct in law and fact.

Pursuant to this court's authority under R.C.M. 1111(c)(2), this court modifies the EoJ by disapproving the reference to Appellant's rank as a noncommissioned officer.

C. Rank Reduction in Entry of Judgment

Appellant contends that this court should order correction of the EoJ. Specifically, it should reflect that deferment of Appellant's reduction in grade runs from the punishment effective date to the date of the EoJ—that is, from "22 March 2023" to 15 June 2023, and not from "27 April 2023" to 15 June 2023. The Government agrees that the EoJ deferment dates appear to be a typographical oversight and should be corrected, but the Government asks this court to modify the EoJ dates and not remand for correction. We agree with both parties that the dates on the EoJ should be corrected, and we agree with the Government that we can modify the dates without remand.

1. Additional Background

On 8 March 2023, the military judge sentenced Appellant to reduction to the grade of E-1. Applying Article 57(a)(1)(A), UCMJ, 10 U.S.C. § 857(A)(1)(A), the effective date of Appellant's sentence of reduction in grade was 22 March 2023, 14 days after the announcement of sentence. On 17 March 2023, Appellant requested suspension or deferment of reduction in grade until entry of judgment. The convening authority signed decision memoranda on 24 April 2023, and then 27 April 2023; these memoranda are not in the Appellant's record of trial. However, what is in the record of trial is a decision on action memorandum dated 2 June 2023, in which the convening authority "replaces" the

previous two memoranda, and states as follows: "On 17 March 2023, [Appellant] requested suspension or deferment of reduction in grade until the entry of judgment. Reduction in rank is deferred until the date the military judge signs the entry of judgment." Following the convening authority's 2 June 2023 decision on action, the EoJ indicates "the convening authority deferred the adjudged reduction in rank from 27 April 2023 until the date of th[e EoJ]."

2. Law and Analysis

The effective date of reduction in grade is 14 days after the announcement of sentence. Article 57(a)(1)(A), UCMJ. The convening authority may defer the effective date of a sentence of reduction in rank until completion of the EoJ. Article 57(b)(1), UCMJ. A Court of Criminal Appeals "may modify a judgment in the performance of their duties and responsibilities." R.C.M. 1111(c)(2); *United States v. Pullings*, 83 M.J. 205, 217 (C.A.A.F. 2023).

The military judge may have used the date the convening authority signed the second decision on action memorandum (dated 27 April 2023) as the date on which the deferment began, and not the date the reduction in rank would have taken effect. Regardless, the Government agrees with Appellant that the start date identified for the deferral of the reduction in rank in the EoJ was error, so we will presume error.

This court is able to modify the entry of judgment to reflect correct deferment dates. *See* R.C.M. 1111(c)(2). We do so in our decretal paragraph.

D. Sentence Severity

Appellant contends the dishonorable discharge portion of his sentence is inappropriately severe in light of the "fleeting misconduct on the charge sheet." Appellant admits he "made a series of 'irrational' decisions" due to the stressors in his marriage at the time, and claims the "limited duration and scope of the conduct here merits no more than a bad-conduct discharge." Appellant then asks this court to "disapprove the dishonorable discharge." We disagree and find no relief is warranted.

1. Additional Background

Appellant entered into a voluntary plea agreement with the convening authority and elected to be sentenced by a military judge. The terms of the agreement required the military judge to adjudge a punitive discharge of "at least a Bad Conduct Discharge" and allowed the military judge to "adjudge a Dishonorable Discharge." The agreement also required the military judge to adjudge a total sentence to confinement between 3 and 12 months. The agreement prohibited a sentence of "forfeitures," and did not specifically prohibit any other possible punishment.

During the presentencing portion of Appellant's court-martial, the Government referenced the stipulation of fact (Prosecution Exhibit 1) which itself referenced several follow-on prosecution exhibits. These exhibits included a picture and two videos distributed by Appellant on the microblogging platform (Prosecution Exhibit 2), and three series of messages between Appellant and other application users (Prosecution Exhibit 3). In one series of messages, the Appellant solicited images from the other platform user, distributed child pornography to the user using that platform, and introduced the user to other platforms used for the distribution of child pornography. As for the two videos, one video was a repeating video loop of an adult male engaged in sexual intercourse with a child; the other video showed an adult male ejaculating on a child. The picture was an image of two young girls, one who is fully nude. Appellant's indecent communications included sharing his fantasy of sexually abusing a young girl and "breed[ing]" with a "pedomom" so he could raise children that he could sexually abuse and share with others to abuse as well.

Appellant's trial defense counsel offered multiple awards and certificates, a photo array of Appellant at various points in his career, and oral and written unsworn statements in which Appellant discussed the challenges he faced as a child, to include abuse he and his family experienced growing up. He also discussed his decision to join the United States Air Force. He described challenges he faced in his relationship with his wife, and shared some of his Air Force experiences. Appellant's counsel on appeal argues that Appellant's years of service were characterized by consistently impressive performance.

2. Law

We review sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006). "We assess sentence appropriateness by considering the particular appellant, the nature and seriousness of the offenses, the appellant's record of service, and all matters contained in the record of trial." *United States v. Fields*, 74 M.J. 619, 625 (A.F. Ct. Crim. App. 2015) (citations omitted). We must also be sensitive to "considerations of uniformity and even-handedness." *United States v. Sothen*, 54. M.J. 294, 296 (C.A.A.F. 2001) (citations omitted). While we have significant discretion in determining whether a particular sentence is appropriate, we are not authorized to engage in exercises of clemency. *See United States v. Nerad*, 69 M.J. 138, 148 (C.A.A.F. 2010).

"Absent evidence to the contrary, [an] accused's own sentence proposal is a reasonable indication of its probable fairness to him." *United States v. Cron*, 73 M.J. 718, 736 n.9 (A.F. Ct. Crim. App. 2014) (citation omitted). Thus, when considering the appropriateness of a sentence, we may consider that a plea

agreement to which Appellant agreed placed upper limits on the sentence that could be imposed. *See Fields*, 74 M.J. at 625–26.

3. Analysis

Appellant contends his sentence was inappropriately severe. Specifically, he asks this court to place the offenses in context and find the severe stigma of a dishonorable discharge is inappropriately severe "in light of the fleeting misconduct on the charge sheet" and stressors in his life at the time. Additionally, he asserts that his "continued . . . contribut[ion] at a high level despite being under extended investigation shows his resiliency and rehabilitative potential." He further argues that "[t]he limited duration and scope of the conduct here merits no more than a bad-conduct discharge." He asks that we disapprove the dishonorable discharge. We are not persuaded that his sentence, to include 12 months' confinement and a dishonorable discharge, is inappropriately severe.

The type of images in the videos and photo, combined with the series of messages Appellant shared with other platform users, indicate Appellant's interest in sexually abusing children. In particular, the language Appellant used in communicating his fantasies of hurting children was grossly offensive, vulgar, filthy, and disgusting in nature. *See Manual for Courts-Martial*, *United States* (2019 ed.), pt. IV, ¶ 105.c. Furthermore, the evidence presented at Appellant's court-martial showed that Appellant deliberately engaged in the trade of child pornography, and he did not inadvertently view or access contraband images.

During his presentencing discussion with the military judge, Appellant acknowledged that the statements he sent to others about sexually abusing young girls was "grossly offensive and shocks the moral sense due to its nature." The life stressors Appellant mentions in his unsworn statement do not excuse sharing the type of videos, photo, and grossly offensive language he did.

Additionally, Appellant's sentence was in the range of what Appellant agreed to in his plea agreement. The plea agreement specifically indicated he could receive a dishonorable discharge and confinement between 3 and 12 months. Appellant admitted to and was convicted of five specifications of violating Article 134, UCMJ, which included one specification of distribution of child pornography, one specification of possessing child pornography, and one specification of viewing child pornography, and two specifications of indecent language. The maximum punishment for these specifications included a dishonorable discharge and 41 years of confinement. Appellant's trial defense counsel argued that an appropriate sentence in this case is three months' confinement and a bad-conduct discharge.

Having given individualized consideration to Appellant, the nature and seriousness of the offenses, Appellant's record of service, and all other matters contained in the record of trial, we conclude Appellant's sentence is not inappropriately severe.

III. CONCLUSION

Consistent with our authority granted under R.C.M. 1111(c)(2), the entry of judgment is modified as follows: as to "Deferments," replace "27 April 2023" with "22 March 2023;" and as to "Reprimand," delete the words "non-commissioned officer and." The findings, as entered, and the sentence, as entered and modified, are correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the findings and sentence, as modified, are **AFFIRMED**.

FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

Appendix B

is earlier, via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

20.38.2. **24 Hour Memorandum.** If the EoJ is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the EoJ via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ).

20.39. General Provision. The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see **Section 23F.** In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111 (e)(1) and R.C.M. 1105.

20.40. Preparing the EoJ.

20.40.1. Minimum Contents. Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0).** Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance with R.C.M. 1104 (b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0).** Practitioners must use the format and checklists for the EoJ that is posted on the VMJD.

20.40.2. Expurgated and Unexpurgated Copies of the EoJ. In cases with both an expurgated and unexpurgated Statement of Trial Results, both an expurgated an unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer **to paragraph 20.8** to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

20.41. First Indorsement to the EoJ. After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See **Chapter 29** for further information on this requirement. Templates are located on the VMJD. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the

first indorsement. In the latter case, the person signing the first indorsement indicates "Acting as the Staff Judge Advocate" in the signature block.

20.42. Distributing the EoJ. The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD within five duty days of completion.

Section 20J—Post-Trial Confinement

20.43. Entry into Post-Trial Confinement. Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused's chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, with original signatures goes with the accused and is used to enter an accused into post-trial confinement.

20.44. Processing the DD Form 2707.

20.44.1. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The person directing confinement, typically the trial counsel, fills out block 7. The SJA fills out block 8 as the officer conducting a legal review and approval. The same person cannot sign both block 7 and block 8. Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

20.44.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the DD Form 2707 is returned to the legal office, and the legal office includes the copy in the ROT. Security Forces retains the original DD Form 2707 for inclusion in the prisoner's Correctional Treatment File.

20.44.3. If an accused is in pretrial confinement, confinement facilities require an updated DD Form 2707 for post-trial confinement.

20.44.4. Failure to comply with these procedural processes does not invalidate or prevent post-trial confinement or the receipt of prisoners. See Articles 11 and 13, UCMJ.

20.45. Effect of Pretrial Confinement. Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian (at the request of the military), or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Murray*, 43 M.J. 507 (AFCCA 1995); and *United States v. Pinson*, 54 M.J. 692 (AFCCA 2001). An accused may also be awarded judicially ordered credit for restriction tantamount to confinement, prior NJP for the same offense, violations of R.C.M. 305, or violations of Articles 12 or 13, UCMJ. See e.g., *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989).

20.45.1. When a military judge directs credit for illegal pretrial confinement (violations of Articles 12 or 13, UCMJ, or R.C.M. 305), the military judge should ensure credit is listed on the STR and EoJ.

20.45.2. Any credit for pretrial confinement should be clearly reflected on the STR, EoJ and DD Form 2707, along with the source of each portion of credit and total days of credit awarded.

Chapter 29

SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

Section 29A—Sex Offender Notification

29.1. General Provision. If the member has been convicted of certain "qualifying offenses" potentially requiring sex offender registration the DAF is required to notify federal, state, and local officials. **(T-0).** As noted in the STR/EoJ Distribution List on the VMJD, a copy of the STR and EoJ, to include attachments and the first indorsements, including any placement of the accused on excess or appellate leave status, must be distributed to the AFSFC, **afcorrections.appellateleave@us.af.mil**, and DAF-CJIC, **daf-cjic@us.af.mil**.

29.2. Qualifying Offenses. See DoDI 1325.07 for a list of offenses which require DAF notification to federal, state, and local officials.

29.2.1. Federal, state and local governments may require an individual to register as a sex offender for offenses that are not included on this list; therefore, this list identifies offenses for which notification is required by the DAF but is not inclusive of all offenses that trigger sex offender registration.

29.2.2. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Questions about whether an offense triggers notification requirements may be directed to the DAF-CJIC Legal Advisor (HQ AFOSI/JA)

29.3. Notification Requirement. The DAF must notify federal, state, and local officials when a DAF member is convicted of a qualifying offense at GCM or SPCM. This requirement applies regardless of whether or not the individual is sentenced to confinement. See DoDI 1325.07, and AFMAN 31-115, Vol 1. The DAF executes this requirement via AF confinement officer/NCO/liaison officer notification to the relevant jurisdictions using the DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*. See AFMAN 71-102, Chapter 3.

29.4. Timing of Notification.

29.4.1. In cases where the member is sentenced to and must serve post-trial confinement, the notification must be made prior to release from confinement. **(T-0). Note:** The member may not be held beyond the scheduled release date for purposes of making the required notifications. This notification is accomplished by the security forces confinement officer, or designee responsible for custody of the inmate, in accordance with the requirements detailed in AFMAN 31-115, Vol 1; AFMAN 71-102; and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. **(T-0).**

29.4.2. In cases where the offender will not serve post-trial confinement either because (1) no confinement was adjudged, or (2) confinement credit exceeds adjudged confinement, the SJA must notify the servicing confinement NCO/officer or SFS/CC in writing within 24 hours of conviction. Once informed by the SJA that the member was convicted of a qualifying offense, the confinement officer or SFS/CC ensures the notifications are made in accordance with AFMAN 71-102, AFMAN 31-115V1, and DoDI 5525.20.

29.5. Legal Office Responsibilities. SJAs are not responsible for directly notifying federal, state and local law enforcement of qualifying convictions. However, SJAs must ensure their support responsibilities are accomplished in order to ensure the DAF is meeting its obligations under federal law and DoD policy. SJAs facilitate the notification requirement in two ways: (1) completion and distribution of post-trial paperwork in accordance with this instruction and the STR/EoJ Distribution List on the VMJD; and (2) notification of the installation confinement officer/NCO in cases where the offender is convicted but not required to serve post-trial confinement, in accordance with this instruction. See **paragraph 29.6** and **paragraph 29.7** and AFMAN 71-102, Chapter 3.

29.6. STR and EoJ. If a member is convicted of a qualifying offense referred to trial by general or special court-martial on or after 1 January 2019, the appropriate box must be initialed on the first indorsement of the STRs and the EoJ by the SJA. The first indorsement format, and guidance for completion are located on the VMJD.

29.7. Notification to the Installation Confinement Officer/NCO. In cases where the member was convicted of a qualifying offense at a general or special court-martial but no post-trial confinement will be served, the SJA must notify, in writing, the confinement officer (or SFS/CC if no confinement officer/NCO is at that installation) of the conviction and sentence within 24 hours of announcement of the verdict. The corrections officer, or the SFS/CC, as appropriate, ensures that the notifications required in AFMAN 31-115, Vol 1 and AFMAN 71-102 are made.

29.8. Convictions by a Host Country. Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with **Section 29A** is required in these cases, the SJA notifies the confinement officer or SFS/CC, as required. It is the SJA's responsibility to ensure the offender completes their portion of the DD Form 2791, or equivalent document, upon release from the host nation. The DD Form 2791 and copies of the ROT must be provided to the appropriate federal, state, and local law enforcement in accordance with **paragraph 29.3** and **paragraph 29.4**, and DoDI 1325.07.

Section 29B—Criminal History Record Information (CHRI) and Fingerprint Collection and Submission (28 U.S.C. § 534, Acquisition, preservation, and exchange of identification records and information; appointment of officials; 28 C.F.R. §§ 20.30, et seq., Federal Systems and Exchange of Criminal History Record Information; DoDI 5505.11)

29.9. General Provision. The DAF, through OSI and Security Forces, submits offender CHRI and fingerprints to the FBI when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See AFMAN 71-102; DoDI 5505.11; 28 C.F.R. §§ 20.30, et seq.; and 28 U.S.C. § 534. Such data is submitted to and maintained in the Interstate Identification Index (III), maintained as part of the FBI's National Crime Information Center (NCIC).

29.10. Criminal History Record Information. CHRI reported in accordance with DoDI 5505.11 and AFMAN 71-102 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP; administrative action; or administrative discharge).

29.11. Identified Individuals.

29.11.1. The DAF submits CHRI and fingerprints on any military member or civilian investigated by a DAF law enforcement agency (OSI or Security Forces) when a probable cause determination has been made that the member committed a qualifying offense.

29.11.2. The DAF submits criminal history data for military service members, military dependents, DoD employees, and contractors investigated by foreign law enforcement organizations for offenses equivalent to those described as qualifying offenses in AFMAN 71-102 and DoDI 5505.1 when a probable cause determination has been made that the member committed an equivalent offense.

29.12. Disposition Data. The DAF, through DAF-CJIC, OSI and Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data merely states what the ultimate disposition of any action (or no action) taken was regarding each qualifying offense. The disposition includes no action, acquittals, convictions, sentencing, NJP, certain administrative actions, and certain types of discharge. Failure to comply with this section will result in inaccurate disposition data, which can have adverse impacts on individuals lawfully indexed in III.

29.13. Qualifying Offenses. Qualifying offenses for fingerprinting requirements constitute either (1) serious offenses; or (2) non-serious offenses accompanied by a serious offense. See 28 CFR. 20.32. A list of offenses that, unless accompanied by a serious offense, do not require submission of data to III is located in AFMAN 71-102, Attachment 5.

29.14. Military Protective Orders. Issuance of an MPO also triggers a requirement for indexing in NCIC. See **paragraph 29.39** and AFMAN 71-102; 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*.

29.15. Qualifying Offenses Investigated by Commander Directed Investigation (CDI). If any qualifying offense was investigated via CDI or inquiry and is subsequently preferred to trial by SPCM or GCM, then CHRI and fingerprints must be submitted to III in accordance with AFMAN 71-102 and DoDI 5505.11. SJAs must ensure they advise commanders as to the requirement to consult with SFS and OSI to obtain and forward CHRI and fingerprints in accordance with that mandate. **Note:** If charges are not preferred, then CHRI and fingerprints are not submitted to III; however, if charges are preferred and later withdrawn, CHRI and fingerprints must be submitted. **(T-0).**

29.16. Probable Cause Requirement. Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. See AFMAN 71-102; DoDI 5505.11. The collection of fingerprints under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose fingerprints are being collected.

29.17. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**

29.18. Process for Submission of Criminal History Data. After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data in accordance with AFMAN 71-102 and DoDI 5505.11.

29.19. Legal Office Final Disposition Requirement.

29.19.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, dismissal of charges, conviction of a lesser included offense, sentence data, nonjudicial punishment, no action) is submitted by OSI or Security Forces for each qualifying offense reported in III or NCIC. OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). If an accused was arraigned at a court-martial, the final disposition is memorialized on the STR and EoJ. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.19.2. The required format for the first indorsement is located on the VMJD.

29.19.3. The servicing legal office will provide disposition documentation to the local Security Forces, OSI, and DAF-CJIC within five duty days of completion of the documents discussed in paragraphs **29.19.4**-**29.19.7**.

29.19.4. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ must be distributed to the local DAF investigative agency that was responsible for the case (e.g., OSI or Security Forces) and DAF-CJIC within five duty days of completion of the EoJ.

29.19.5. For information regarding final disposition where the final disposition consists of NJP, see DAFI 51-202.

29.19.6. In cases where the allegations involve offenses listed in paragraphs **10.2.1.1**-**10.2.1.3**, and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local OSI detachment and DAF-CJIC in accordance with **paragraph 10.3.2** **Note:** Do not forward the sexual assault legal review, only the convening authority notification memorandum.

29.19.7. For all other final dispositions which must be submitted in accordance with **Section 29E**, AFMAN 71-102, and DoDI 5505.11, the SJA must ensure disposition data is provided to ensure timely and accurate inclusion of final disposition data. See **Section 29E** for further distribution guidance.

29.20. Expungement of Criminal History Data and Fingerprints. Expungement requests are processed in accordance with guidance promulgated in AFMAN 71-102.

Section 29C—DNA Collection (10 U.S.C. §

1565; DoDI 5505.14, DNA Collection and Submission Requirements for Law Enforcement)

29.21. General Provision. The DAF, through OSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when fingerprints are collected pursuant to DoDI 5505.11. **(T-0).** See DoDI 5505.14; 10 U.S.C. 1565; 34 U.S.C. §

40702, *Collection and use of DNA identification information from certain federal offenders*; 28 C.F.R. § 28.12, *Collection of DNA samples*.

29.22. Qualifying Offenses. DNA collection and submission is required when fingerprints are collected pursuant to DoDI 5505.11. DNA is not collected or submitted for the non-serious offenses enumerated in AFMAN 71-102, Attachment 5 unless they are accompanied by a serious offense requiring fingerprint collection in accordance with DoDI 5505.11.

29.23. Probable Cause Requirement. DNA collection occurs only where there is probable cause to believe that a qualifying offense has been committed and that the person identified committed it. The collection of DNA under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose DNA is being collected.

29.24. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel prior to submission of DNA for inclusion in CODIS in accordance with AFMAN 71-102. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**

29.25. Timing of Collection and Forwarding. OSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14 and AFMAN 71-102. If not previously submitted to USACIL, the appropriate DAF law enforcement agency (i.e., OSI or Security Forces) will collect and submit DNA samples from service members: against whom court-martial charges are preferred in accordance with RCM 307 of the MCM; ordered into pretrial confinement after the completion of the commander's 72-hour memorandum required by RCM 305(h)(2)(C) of the MCM; and convicted by general or special court-martial.

29.26. STR and EoJ. In cases where specifications alleging qualifying offenses were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be completed on the first indorsement of the STR and EoJ by the SJA.

29.27. Final Disposition Requirement. As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, final disposition of court-martial charges must be forwarded to OSI and Security Forces to ensure DNA is appropriately handled.

29.27.1. The final disposition is memorialized on the following forms: STR and EoJ, whichever is applicable. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.27.2. Formats for the STR, EoJ, and first indorsement are located on the VMJD.

29.27.3. In cases where the allegations involve offenses listed in paragraphs **10.2.1.1**-**10.2.1.3**, and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to OSI in accordance with **paragraph 29.19.6**.

29.27.4. For all other dispositions, the SJA must ensure disposition data for qualifying offenses is provided to ensure timely and accurate inclusion of final disposition data. Disposition documentation must be distributed to the local OSI detachment, Security Forces and DAF-CJIC within five duty days of completion of the final disposition. See **Section 29E** for further distribution guidance.

29.28. Expungement of DNA. DoD expungement requests are processed in accordance with guidelines promulgated in AFMAN 71-102 and DoDI 5505.14.

Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. § 921-922, Definitions; 27 C.F.R. § 478.11)

29.29. General Provision. 18 U.S.C. § 922, *Unlawful acts*, prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person who fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and 922 (g)(1), respectively, as applied by DoDI 6400.06. For further guidance, see AFMAN 71-102. Persons who are prohibited from purchase, possession, or receipt of a firearm are indexed in the National Instant Background Check System (NICS).

29.30. Categories of Prohibition (18 U.S.C. §§ 922(g), 922(n); 27 C.F.R. § 478.11; AFMAN 71-102, Chapter 4).

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year.

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. **Note:** This category of prohibition would not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(12).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, *Definitions*. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within

the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 USC 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD. **Note:** This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See **paragraph 29.33.2.** The original notification via AF Form 177, *Notification of Qualification for Prohibition of Firearms*, Ammunition, and Explosives, and subsequent service of the Certification of Final Review or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the "Lautenberg Amendment") at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note**: Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A "misdemeanor crime of domestic violence" for purposes of indexing under this section is defined as follows: an offense that— (i)is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or

guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note: Exceptions to this definition can be located at 18 USC § 921(g)(33). See also 27 CFR 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term "qualifying conviction" does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a "misdemeanor crime of domestic violence." See 10 U.S.C. § 1562; DoDI 6400.07.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under **Section 29B.**

29.31. Notification to the Accused of Firearms Prohibition. When a service member becomes ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. **Form of Notice.** A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. **SJA Responsibility to Notify.** In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA must be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177 should be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the referral paperwork.

29.31.3. Practitioners are encouraged to deconflict with the local investigating DAF law enforcement agency in cases where law enforcement is also responsible for ensuring notification (i.e., where multiple prohibitions attached and law enforcement may be providing notification of any prohibition).

29.31.4. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.5. Any notification made to the accused may be made through the accused's counsel.

29.31.6. If the accused declines to sign, this should be annotated on the form.

29.31.7. After completion of the form, the SJA must provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: **daf.cjic@us.af.mil**. The SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement. The legal office will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained as part of the official record. See AFMAN 71-102, Chapter 4.

29.32. STR and EoJ. In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. **Note:** If the accused is convicted of a crime of domestic violence as defined in paragraph **29.30.7.1** and **18** U.S.C. § 922, both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

29.33. Final Disposition Requirement. As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §§ 921-922 is appropriately handled. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local

responsible DAF investigative agency and DAF-CJIC within five duty days of completion of the EoJ. Templates for the STR, EoJ, and first indorsement are located on the VMJD. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See **Section 29E** for further distribution guidance.

29.34. SJA Coordination with Commanders. The SJA or designee must inform commanders of the impact of the conviction on the accused's ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense of misdemeanor domestic violence (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

Section 29E—Distribution of Court-Martial Data for Indexing Purposes

29.35. General Provision. In order to ensure that indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the applicable local DAF law enforcement agency and DAF-CJIC:

29.35.1. Charge sheets in cases referred to general courts-martial, where any charged offense has a possible sentence to confinement greater than one year;

29.35.2. STR, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.3. EoJ and first indorsement, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.4. In SCMs for drug use or possession that would trigger firearm prohibitions, the final completed DD Form 2329 and first indorsement;

29.35.5. Certification of Final Review in any case where any offense qualifies for any type of indexing discussed in this chapter;

29.35.6. Notification of outcome of any cases as to qualifying offenses litigated at or disposed of via magistrate court;

29.35.7. Order pursuant to Article 73, UCMJ, for a new trial, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.8. Order for a rehearing on the findings or sentence of a case, pursuant to Article 63, UCMJ and

29.35.9. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under **Sections 29B-D** of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with **paragraph 10.2**; NJP records in accordance with DAFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for resignation or retirement in lieu of trial by court-martial, administrative paperwork for drug use or possession).