

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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JOHN A. EVANGELISTA,  
*Applicant,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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**Application to the Hon. John G. Roberts, Jr.,  
for Extension of Time to File a  
Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Armed Forces**

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Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30.3, the Applicant, John A. Evangelista, requests an extension of time, to and including September 5, 2026, to file a petition for a writ of certiorari to review the judgments of the U.S. Court of Appeals for the Armed Forces (CAAF) in this case. Unless an extension is granted, the deadline for filing the petition for certiorari will be July 7, 2026.

In support of this request, Applicant states the following:

1. Applicant, a member of the United States Air Force, was tried at a general court-martial. He was convicted, contrary to his pleas, of one charge of sexual assault and two charges of abusive sexual contact.

2. At the Air Force Court of Criminal Appeals (Air Force Court), Applicant challenged whether his conviction violated due process because the trier of fact was instructed it could convict applicant on an unlawful theory of liability. *See Yates v. United States*, 354 U.S. 298 (1957). The Air Force Court did not discuss this issue in its opinion, but affirmed the findings of guilt. *United States v. Evangelista*, No. ACM 40531, 2025 CCA LEXIS 501 (A.F. Ct. Crim. App. Nov. 5, 2025).

3. The Court of Appeals for the Armed Forces (CAAF) denied review in Applicant's case on April 8, 2026. Enclosure. This Court has jurisdiction under 28 U.S.C. § 1259(3).

4. This case involves the ongoing litigation of *United States v. Mendoza*, 85 M.J. 213 (C.A.A.F. 2024). In *Mendoza*, the CAAF held that, under 10 U.S.C. § 920, a defendant cannot be found guilty under one theory of liability (i.e., that the victim did not consent) if the Government's charging scheme or case theory involved another theory of liability (i.e., that the victim was incapacitated). *Id.* at 220; *United States v. Cassilas*, 86 M.J. 94, 101 (C.A.A.F. 2025). But by interpreting 10 U.S.C. § 920 in that fashion, the CAAF inadvertently created an instructional error it has declined to fix. *United States v. Coe*, No. ARMY 20220052, 2025 LX 341427, at \*57 (A. Ct. Crim. App. Aug. 28, 2025) (Murdough, J., dissenting) (noting "*Mendoza* appears to read an additional element into Article 120(b)(2)(A) that is at odds with the statutory text"); *United States v. Grafton*, No. 202400055, 2025 CCA LEXIS 375, at \*34 (N-M. Ct. Crim. App. Aug. 11, 2025) (Harrell, S.J., concurring in part and dissenting in part) (noting the instruction "[a] sleeping, unconscious, or incompetent

person cannot consent' is irreconcilable with [this Court's] interpretation of Article 120(b)(2)(A) in *Mendoza*").

5. While counsel have been working diligently in preparing this petition, counsel still have significant briefing obligations between now and the current due date of the petition. Further, counsel of record is scheduled for a permanent change of station, to begin on July 27, 2026. This permanent change of station requires undersigned counsel to complete a variety of trainings and out process from his installation. This has depleted the time available to work his cases. While additional counsel has been assigned, additional counsel requires time to become familiar with Applicant's record.

6. Additionally, as part of the basis for requesting an extension of time, the printing required for Applicant's petition must be processed through a federal government agency (the Air Force), which has payment and handling requirements a private firm does not. The procurement process for a printing job cannot be forecasted with certainty, often has delays, and cuts approximately two weeks out of undersigned counsel's time to finalize the petition for a writ of certiorari.

7. Finally, counsel note that this application is being filed eight days before the current deadline. But this out of time filing is justified by extraordinary circumstances. Counsel of record inadvertently calendared (in his phone) the deadline for filing this application as June 30, 2026. This error was not discovered until today, when counsel of record began to prepare this application and re-calculated the date that the CAAF denied review. Upon realizing this error, counsel of record

immediately drafted and filed this application. Further, and as noted above, counsel of record has been attending training and otherwise completing his out processing from his current duty station, which has depleted time he would otherwise dedicate to this case. Finally, this error was not caused by the Applicant.

8. Because of the extra time needed to acquire funds from the Air Force to complete printing, it is unlikely that counsel could file the petition for writ of certiorari before the current deadline.

For the foregoing reasons, Applicant respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari up to, and including, September 5, 2026

Respectfully submitted,



TREVOR N. WARD

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June 29, 2026

**United States Court of Appeals  
for the Armed Forces  
Washington, D.C.**

United States,  
Appellee

USCA Dkt. No. 26-0128/AF  
Crim.App. No. 40531

v.

**ORDER DENYING PETITION**

John A.  
Evangelista,  
Appellant

On consideration of the petition for grant of review of the decision of the United States Air Force Court of Criminal Appeals, it is by the Court, this 8th day of April, 2026,

ORDERED:

That the petition is hereby denied.

For the Court,

/s/ Malcolm H. Squires, Jr.  
Clerk of the Court

cc: The Judge Advocate General of the Air Force  
Appellate Defense Counsel (Ward)  
Appellate Government Counsel (Payne)