

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

**MOTION FOR EXTENSION OF
TIME (1) TO CONDUCT DUBAY
HEARING**

v.

Docket No. ARMY 20230576

Warrant Officer 1 (WO-1)

JOSEPH S. BURCH,

United States Army,

Appellant

Tried at Fort Novosel, Alabama on
10 April, 28 July, and 6 November
2023 before a general court-martial
appointed by Commander, Fort
Novosel, Lieutenant Colonel Trevor
Barna and Lieutenant Colonel
Pamela Jones, military judges,
presiding.

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

Pursuant to Rule 24.1 of this Honorable Court's Rules of Appellate
Procedure, the undersigned appellate government counsel moves for an extension
of time to comply with this Court's order to conduct a post-trial hearing pursuant
to *United States v. Dubay*, 17 U.S.C.M.A. 147, 37 C.M.R. 411 (1967).

On 17 April 2024, this Court ordered the *Dubay* military judge to conduct a
Dubay hearing no later than 16 July 2024, ninety days after this court's order. The
government requests a 71-day extension of time from 16 July 2024 to 25
September 2024 for the following reasons:

1. On 10 June 2024, the government proposed bifurcated proceedings in
light of LTC Pamela Jones's availability on 19 and 20 June 2024. (Gov't App. Ex.

1, 2). On 11 June 2024, the *Dubay* military judge concurred. (Gov't App. Ex. 1).

However, no hearing date was scheduled.

2. On 26 June 2024, the *Dubay* Hearing military judge received the completed electronic docket request (EDR). (Gov't App. Ex. 3).

3. On 28 June 2024, the *Dubay* Hearing military judge scheduled the hearing to occur on 18 July 2024 at 0900. (Gov't App. Ex. 3). This is the date the government provided in the EDR and to which defense did not oppose. (Gov't App. Ex. 3).

4. Currently, three witnesses are available to testify on 18 July 2024: CPT Nelson Robles, MAJ William Wicks, and CPT Natalie Gaynier. (Gov't App. Ex. 3).

5. However, two witnesses are unavailable to testify on 18 July 2024, but available to testify on 26 August 2024: CPT Timothy Macri and LTC Jones. (Gov't App. Ex. 3).

6. Based on essential witness availability, the government is requesting to hold the *Dubay* Hearing on 18 July 2024 and 26 August 2024. (Gov't App. Ex. 3).

7. Additionally, this court's order requires an authenticated verbatim transcript of the hearing. To afford the court reporter sufficient time to complete the transcript and the military judge to make her ruling, the government requests 30 days after the hearing on 26 August 2024 to do so.

WHEREFORE, the United States prays this honorable court grant the instant motion.

MOTION FOR EXTENSION
OF TIME (1) TO CONDUCT
DUBAY HEARING



Vy/T. Nguyen
CPT, JA
Appellate Attorney, Government
Appellate Division

PANEL No. 2

GRANTED: _____

DENIED: _____

DATE: _____

CERTIFICATE OF SERVICE, U.S. v. BURCH (20230576)

I certify that a copy of the foregoing was sent via electronic submission to
the Defense Appellate Division at [REDACTED]

[REDACTED] on the 28th day of June, 2024.

[REDACTED]
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