

No. 17-840

In the Supreme Court of the United States

TORIE A. CASH, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES*

MEMORANDUM FOR THE UNITED STATES

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Petitioners are three military servicemembers who were convicted of various offenses by military courts-martial. Their convictions and sentences were affirmed, in whole or in part, by the Army Court of Criminal Appeals (ACCA). Pet. App. 2a, 4a-6a, 8a-23a. The United States Court of Appeals for the Armed Forces granted petitions for discretionary review and affirmed. *Id.* at 1a, 3a, 7a.

Petitioners contend (Pet. 3-5) that they are entitled to new hearings before the ACCA because the panels that acted on their appeals included at least one judge who was also appointed to the United States Court of Military Commission Review by the President, with the advice and consent of the Senate. The same issue is currently pending before this Court in *Dalmazzi v. United States*, cert. granted, No. 16-961 (Sept. 28, 2017); *Cox v. United States*, cert. granted, No. 16-1017 (Sept. 28, 2017); and *Ortiz v. United States*, cert. granted,

No. 16-1423 (Sept. 28, 2017). Accordingly, the petition for a writ of certiorari should be held pending the Court's decision in *Dalmazzi*, *Cox*, and *Ortiz*, and then disposed of as appropriate in light of the Court's decision in those cases. In any remand proceedings following such a hold, the lower courts would have the opportunity to consider in the first instance any potential case-specific obstacles to relief, including whether each petitioner has adequately preserved the relevant legal arguments.

Respectfully submitted.

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Solicitor General

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