No. 19-55

# In the Supreme Court of the United States

JAMES W. RICHARDS, IV, PETITIONER

*v.*

BARBARA M. BARRETT,
SECRETARY OF THE AIR FORCE, ET AL.

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

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

Whether the Court of Appeals for the Armed Forces lacked jurisdiction to consider a writ-appeal petition concerning the denial of mandamus relief that would have been directed to military officials who calculated the amount of good-time credit that petitioner may earn during service of a sentence imposed in court-martial proceedings.

**ADDITIONAL RELATED PROCEEDINGS**

General Court-Martial (Tyndall Air Force Base):

*United States* v. *Richards* (Feb. 21, 2013) (no docket number assigned)

United States Air Force Court of Criminal Appeals:

*United States* v. *Richards*, Misc. Docket No. 2012-08 (Dec. 19, 2012) (pretrial detention habeas petition)

*United States* v. *Richards*, Misc. Docket No. 2012-14 (Dec. 19, 2012) (second pretrial habeas petition)

*United States* v. *Richards*, No. ACM 38346 (May 2, 2016) (direct appeal)

*Richards* v. *James*, Misc. Docket No. 2017-04 (Oct. 19, 2018) (good-time credit mandamus petition)

*Richards* v. *Wilson*, Misc. Docket No. 2018-07 (Oct. 22, 2018) (habeas petition alleging unlawful command influence)

*Richards* v. *Wilson*, Misc. Docket No. 2018-10 (Dec. 7, 2018) (unrelated mandamus petition)

United States Court of Appeals for the Armed Forces:

*In re Richards*, Misc. No. 13-8023 (Feb. 14, 2013)

*United States* v. *Richards*, No. 16-0727 (July 13, 2017) (discretionary review on direct appeal)

*Richards* v. *United States Air Force Court of Criminal Appeals*, No. 18-0256 (June 8, 2018) (mandamus petition at Pet. App. 62a-73a)

*Richards* v. *James*, No. 19-0093 (Jan. 31, 2019)

Supreme Court of the United States:

*Richards* v. *United States*, No. 17-701 (June 28, 2018) (direct appeal)

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## OPINIONS BELOW

The orders of the Court of Appeals for the Armed Forces (Pet. App. 4a-5a, 6a-7a) are reported at 78 M.J. 406 and 78 M.J. 323. The opinion and order of the Air Force Court of Criminal Appeals (Pet. App. 8a-29a, 51a-54a) are not published in the Military Justice Reporter but the opinion is available at 2018 WL 5276270. An earlier opinion of the Court of Appeals for the Armed Forces (Pet. App. 30a-44a) is reported at 76 M.J. 365.

## JURISDICTION

The judgment of the Court of Appeals for the Armed Forces was entered on January 31, 2019. A petition for reconsideration was denied on March 1, 2019 (Pet. App. 4a-5a). On May 22, 2019, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including July 9, 2019, and the petition was filed

on July 8, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1259(3).

**STATEMENT**

Petitioner, a former United States Air Force lieutenant colonel, was tried and convicted before a general court-martial on one specification of possession of child pornography and five specifications of indecent acts with a child under 16 years of age, in violation of Article 134 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 934 (2012); and four specifications of failing to obey a lawful order, in violation of Article 92 of the UCMJ, 10 U.S.C. 892 (2012). See Pet. App. 31a. Petitioner was sentenced to dismissal, 17 years of confinement, and forfeiture of all pay and allowances. *Ibid.* After the convening authority approved the adjudged sentence, the Air Force Court of Criminal Appeals (AFCCA) affirmed, 2016 WL 3193150; the Court of Appeals for the Armed Forces (CAAF) affirmed, Pet. App. 30a-44a; and this Court denied certiorari, 138 S. Ct. 2707.

Meanwhile, petitioner petitioned the AFCCA for a writ of mandamus, alleging a miscalculation of good-time credit for his future service of his sentence. Pet. App. 45a-50a. The AFCCA initially denied the petition for lack of jurisdiction, *id.* at 51a-54a, but on reconsideration denied the petition on the merits, *id.* at 8a-29a. The CAAF dismissed petitioner's writ-appeal petition for lack of jurisdiction, *id.* at 6a-7a, and denied reconsideration, *id.* at 4a-5a.

1. In 2011, Air Force investigators at Tyndall Air Force Base in Florida received information that petitioner, who was stationed at the base, had allegedly molested a child several years earlier. Pet. App. 32a. During the ensuing investigation, the Air Force determined that petitioner was engaged in a sexual relationship

with a teenager, including on the base, and that petitioner had been sending sexually explicit online communications to the child for at least a year. *Id.* at 32a-33a. A subsequent search of petitioner's computer revealed thousands of images of child pornography. *Id.* at 36a.

Petitioner was charged and tried before a general court-martial on multiple specifications for violations of Articles 92 and 134 of the UCMJ, 10 U.S.C. 892, 934 (2012). See Pet. App. 31a. Petitioner was convicted of those offenses and sentenced accordingly. *Ibid.* The AFCCA affirmed, 2016 WL 3193150; the CAAF granted discretionary review on two issues, 76 M.J. 44, and affirmed, Pet. App. 30a-44a; and this Court denied certiorari, 138 S. Ct. 2707.

2. a. On June 4, 2017, while petitioner's direct appeal was pending before the CAAF, petitioner filed in the AFCCA a pro se petition for a writ of mandamus (Pet. App. 45a-50a), seeking an order directing the commander of the facility in which petitioner was confined to recalculate petitioner's minimum release date using ten, rather than five, days of good-time credit per month. *Id.* at 46a-48a. That mandamus petition was docketed as AFCCA Miscellaneous Docket No. 2017-04. See *id.* at 8a, 51a.

Until 2004, Department of Defense (DoD) regulations governing confinement, which Air Force regulations followed, provided ten days of good-time credit for each month of a term-of-years sentence of ten years or more served by a military prisoner. See Pet. App. 11a-12a. In 2004, however, DoD updated its regulations to award only five days of good-time credit per month, regardless of the length of the sentence imposed. *Id.* at

13a. That change applied to then-future military offenses for which a sentence was adjudged on or after January 1, 2005. *Ibid.*

Petitioner committed the earliest of the offenses for which he was convicted in June 2005 and was sentenced by a military judge in 2013. Pet. App. 10a. In July 2015, officials at the military detention barracks at which petitioner was confined calculated petitioner's minimum release date for his 17-year term of imprisonment by accounting for good-time credit that petitioner could earn at a rate of five days per month. *Id.* at 11a. Petitioner sought mandamus in the AFCCA by arguing that, although the relevant DoD regulations reducing monthly good-time credits had been adopted before his offense conduct, only the Secretary of the Air Force, not DoD, had statutory authority to establish good-time-credit rules for Air Force offenders and Air Force regulations adopted after 2005 could not be applied to him consistent with the Ex Post Facto Clause. See *id.* at 27a, 29a.

b. On June 16, 2017, the AFCCA denied petitioner's mandamus petition in No. 2017-04 for lack of jurisdiction. Pet. App. 51a-54a. The court observed that petitioner's petition for review in his criminal case was still pending before the CAAF, and it concluded that it lacked jurisdiction to grant a writ of mandamus while petitioner's case was pending with a higher court. *Id.* at 53a.

c. After the CAAF affirmed the AFCCA's decision on direct review, Pet. App. 30a-44a, the AFCCA granted petitioner's motion to reconsider its dismissal of his mandamus petition. AFCCA Order (June 4, 2018) (No.

2017-04).[1] The government then moved to dismiss that petition for lack of jurisdiction. Pet. App. 55a-61a.

The AFCCA denied the mandamus petition on the merits. Pet. App. 8a-29a. In concluding that it had jurisdiction to entertain it, the court recognized that petitioner's mandamus-based challenge to the calculation of good-time credit was "not directly connected to the legality or appropriateness of [his] approved sentence," *id.* at 15a-16a. The court also acknowledged that "[t]he responsibility for determining how much good time credit, if any, will be awarded is an administrative responsibility" that is not reviewable on direct appeal. *Id.* at 18a-19a (citation omitted). The court concluded, however, that it had jurisdiction to determine "whether Petitioner's approved sentence [was] being unlawfully increased" by the administrative calculation of good-time credit, *id.* at 21a. See *id.* at 16a-21a.

Turning to the merits, the AFCCA rejected petitioner's contention that only the Secretary of the Air Force could promulgate good-time credit rules for Air Force offenders. Pet. App. 27a-28a. The court further determined that the 2004 DoD good-time-credit regulations adopted before petitioner committed his offenses, which provide five days of good-time credit per month, had been properly applied to petitioner. *Id.* at 28a-29a. The court accordingly denied mandamus relief. *Id.* at 29a.

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[1] Shortly before the AFCCA granted reconsideration, petitioner filed a mandamus petition in the CAAF (Pet. App. 62a-73a) seeking to compel the AFCCA to rule on his reconsideration motion. *Id.* at 67a; see 77 M.J. 436 (No. 18-0256). The CAAF granted petitioner's subsequent request to withdraw that petition. 78 M.J. 14; see Pet. App. 57a.

3. Petitioner filed in the CAAF a writ-appeal petition challenging the AFCCA's denial of his mandamus petition. See Pet. C.A. Writ-Appeal Pet. 1-2.

The CAAF issued a summary order (Pet. App. 6a-7a), which reflects that it pertains to Court of Criminal Appeals Docket No. 2018-07. *Id.* at 6a.[2] The CAAF's one-sentence order states that petitioner's "writ-appeal petition is hereby dismissed for lack of jurisdiction." *Id.* at 7a. The CAAF subsequently denied reconsideration in a summary order. *Id.* at 4a-5a.

**ARGUMENT**

Petitioner invokes (Pet. 1) this Court's certiorari jurisdiction under 28 U.S.C. 1259(3) to seek review on his contention (Pet. 26-28) that the CAAF erroneously dismissed his writ-appeal petition for lack of jurisdiction. Petitioner further contends (Pet. 20-25) that the CAAF's summary order conflicts with *United States* v. *Denedo*, 556 U.S. 904 (2009). This Court, however, lacks jurisdiction to review the CAAF's order. In any event, nothing in that order conflicts with *Denedo*; the proper forum for petitioners' good-time-credit contentions is an

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[2] Petitioner mislabeled his writ-appeal petition to the CAAF, which challenged the AFCCA's good-time-credit decision in No. 2017-04, as pertaining to "No. 2018-07." Pet. C.A. Writ-Appeal Pet. 1. The government therefore assumes that, notwithstanding its references to No. 2018-07, the CAAF intended its orders in this case (Pet. App. 4a-7a) to pertain to the AFCCA's decision (*id.* at 8a-29a) in No. 2017-04. Cf. *id.* at 8a, 51a. Docket No. 2018-07 pertains to a petition for a writ of habeas corpus that petitioner filed in the AFCCA raising different issues. On October 22, 2018, three days after it denied the mandamus petition now at issue, the AFCCA dismissed petitioner's habeas petition for want of jurisdiction. See *Richards* v. *Wilson*, Misc. Docket No. 2018-07, 2018 WL 5263459, at *1 (AFCCA Oct. 22, 2018) (noting the separate denial of mandamus relief in "Misc. Dkt. 2017-04").

Article III court exercising habeas review; and no further review of the CAAF's dismissal of the writ-appeal petition is warranted.

1. This Court lacks statutory jurisdiction to decide the question petitioner presents. Section 1259 grants this Court authority to review by writ of certiorari "[d]ecisions of the [CAAF]" in only four specified categories of military cases. 28 U.S.C. 1259. None of those jurisdictional bases apply here.

Petitioner invokes (Pet. 1) this Court's jurisdiction under Section 1259(3), which applies only to "[c]ases in which the [CAAF] *granted* a petition for review under [S]ection 867(a)(3) of [T]itle 10." 28 U.S.C. 1259(3) (emphasis added). Even assuming *arguendo* that the CAAF had treated petitioner's writ-appeal petition as a petition for review under Section 867(a)(3), Section 1259(3) could not vest this Court with jurisdiction over petitioner's case, because the CAAF dismissed—and thus did not grant—the petition. Pet. App. 7a. Moreover, Congress has made clear that this Court's authority "in [S]ection 1259" to review CAAF decisions by writ of certiorari does not authorize the Court to "review * * * any action of the [CAAF] in refusing to grant a petition for review." 10 U.S.C. 867a(a). That broad prohibition against review of "any" action of the CAAF in "refusing to grant" a petition applies directly here, because the CAAF's dismissal of the petition for lack of jurisdiction is an action refusing to grant the petition on jurisdictional grounds.

The CAAF's prior decision in petitioner's case does not vest this Court with authority to review the CAAF's 2019 order (Pet. App. 6a-7a) involving unrelated issues. In 2016, the CAAF granted petitioner's earlier petition for review on two of the issues that had been resolved

in his direct appeal, 76 M.J. 44, and then rendered a decision in 2017 (Pet. App. 30a-44a) affirming the AFCCA on the issue that remained for adjudication, *id.* at 31a-32a & n.1. This Court had jurisdiction under Section 1259(3) to review by writ of certiorari the 2017 "[d]ecision[] of the [CAAF]" as to those issues, see 28 U.S.C. 1259, but the Court denied review, 138 S. Ct. 2707. The Court's prior authority to review the CAAF's earlier decision confers no ongoing authority to review all subsequent orders pertaining to requests that concern different issues, particularly where, as here, the CAAF has refused to grant a petition on those issues.

Petitioner has not attempted to invoke this Court's jurisdiction under any of the three other subsections of Section 1259. See Pet. 1. None of those provisions are relevant here. First, this is not a capital case "reviewed by the [CAAF] under [S]ection 867(a)(1)." 28 U.S.C. 1259(1); see 10 U.S.C. 867(a)(1) (providing for CAAF review in cases in which "the sentence, as affirmed by a Court of Criminal Appeals, extends to death"). Second, this is not a case that was "certified to the [CAAF] by the Judge Advocate General under [S]ection 867(a)(2)." 28 U.S.C. 1259(2). And finally, this is not a case "in which the [CAAF] granted relief." 28 U.S.C. 1259(4). If an order of the CAAF provides "any 'redress or benefit'" sought, including an order reversing a subordinate court's decision and remanding for further proceedings, the CAAF has granted "relief" and Section 1259(4) will vest this Court with authority to review the CAAF's decision. *Denedo*, 556 U.S. at 909-910.[3] But the

[3] Section 1259(4) vested this Court with jurisdiction in both *Denedo* and *Clinton* v. *Goldsmith*, 526 U.S. 529 (1999), both of which reviewed CAAF decisions concerning relief under the All Writs Act, 28 U.S.C. 1651. *Denedo* expressly rested its jurisdiction on Section

CAAF's one-sentence order in this case merely dismissed petitioner's writ-appeal petition based on the court's determination that it lacked authority to adjudicate it. Pet. App. 7a. That dismissal granted no relief.

2. In any event, even if this Court had jurisdiction under Section 1259, the CAAF's summary order dismissing petitioner's writ-appeal petition would not warrant the Court's review. In this Court, petitioner argues (Pet. 26-28) that the CAAF erred in dismissing his writ-appeal petition because, he contends, Article 67(a)(3) of the UCMJ, 10 U.S.C. 867(a)(3), vests the CAAF with jurisdiction to grant for good cause a petition for review filed by an accused. But petitioner never invoked Section 867(a)(3) in the CAAF. Rather than file a petition for review under that provision, petitioner opted to follow a different procedural path, which in CAAF practice is labeled a "writ-appeal petition." See Pet. C.A. Writ-Appeal Pet. 1-23. The CAAF's summary order dismissing petitioner's "writ-appeal petition" does not suggest that the CAAF adjudicates a writ-appeal petition as it would a petition for review subject to Section 867(a)(3). And as explained below, the CAAF lacked jurisdiction to provide the extraordinary relief that petitioner sought in his petition. The CAAF thus correctly denied petitioner's writ-appeal petition for want of jurisdiction.

a. Petitioner elected to file a "writ-appeal petition" in the CAAF rather than a petition for review governed

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1259(4). *Denedo*, 556 U.S. at 909-910. *Goldsmith* did not specifically address this Court's jurisdiction, but it reviewed the CAAF's grant of relief under the All Writs Act. *Goldsmith*, 526 U.S. at 533. The government in *Goldsmith* invoked this Court's jurisdiction under Section 1259(3) without analysis, see Pet. at 2, *Goldsmith*, *supra* (No. 98-347), but the respondent correctly noted that Section 1259(4) was the basis for the Court's jurisdiction, see Br. in Opp. at 1, *Goldsmith*, *supra*.

by Section 867(a)(3). Petitioner's petition specifically invoked CAAF rules that distinguish a writ-appeal petition pertaining to a decision of a military court of criminal appeals (CCA) granting or denying an extraordinary writ from a petition for review under Section 867(a)(3). Petitioner thus never cited Section 867(a)(3) and instead made clear that he submitted his "Writ-Appeal Petition for Review * * * pursuant to [CAAF] Rules 4(b)(2) and 27." Pet. C.A. Writ-Appeal Pet. 1; see *id.* at 2-23.

The rules for writ-appeal petitions that petitioner invoked and their counterparts governing petitions for review under Section 867(a)(3) show that petitioner did not seek CAAF review under Section 867(a)(3). For example, the portion of Rule 4, which describes the bases for invoking CAAF jurisdiction, that applies to petitions for review under Section 867(a)(3) is Rule 4(a)(3), which cross-references Rule 18(a)(1)'s express reference to "a petition for grant of review" "under Article 67(a)(3), UCMJ, 10 USC § 867(a)(3)." C.A.A.F. R. 18(a)(1); see C.A.A.F. R. 4(a)(3). But petitioner invoked Rule 4(b)(2), which separately provides that the CAAF "may, in its discretion, entertain a writ-appeal petition to review the decision of a [CCA] on a petition for extraordinary relief." C.A.A.F. R. 4(b)(2). Unlike a petition for review, a writ-appeal petition must be filed "no later than 20 days" after service of the CCA's decision. C.A.A.F. R. 19(e); cf. 10 U.S.C. 867(b) (statutory 60-day filing deadline for petition for review); C.A.A.F. R. 19(a)(1) (same 60-day deadline for petition for review). Petitioner accordingly invoked Rule 27, which provides that a "writ-appeal petition" must be filed within that 20-day period "prescribed by Rule 19(e)" and establishes a briefing schedule different from the schedule for petitions for review.

C.A.A.F. R. 27(b); cf. C.A.A.F. R. 19(a)(5) and (7) (briefing schedule for petition for review).

The CAAF's rules further specify that such filings must follow different formats. Among other things, a petition for review filed by counsel must indicate that review is sought "pursuant to the provisions of Article 67(a)(3), [UCMJ], 10 USC § 867(a)(3)," C.A.A.F. R. 20(b), whereas a writ-appeal petition must be filed in the same form as a petition seeking extraordinary relief directly from the CAAF, with no required reference to Section 867(a)(3), see C.A.A.F. R. 28(a). Petitioner's counsel followed only the later provisions governing writ-appeal petitions. See Pet. C.A. Writ-Appeal Pet. 1-23.[4]

b. Petitioner's decision to submit a writ-appeal petition rather than a petition for review under Section 867(a)(3) triggered a distinct adjudicatory process within the CAAF, which, like its predecessor (the Court

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[4] In *United States* v. *Gray*, 77 M.J. 5 (C.A.A.F. 2017), cert. denied, 138 S. Ct. 2709 (2018) (No. 17-7769), the CAAF considered a filing in which Gray sought its mandatory review under 10 U.S.C. 867(a)(1), which the CAAF then "construe[d] as a writ-appeal petition" from the adverse decision of the Army CCA on a writ of *coram nobis*. Cert. Pet. App. at A8, *Gray*, *supra*. The government's brief opposing certiorari assumed that, in doing so, the CAAF "construed petitioner's filing 'as a writ-appeal petition' seeking discretionary review of the Army CCA's decision *under 10 U.S.C. 867(a)(3)*," and argued that none of the four subsections of 28 U.S.C. 1259 gave this Court jurisdiction to review a denial of such a petition under Section 867(a)(3). Br. in Opp. at 28-29, *Gray*, *supra* (quoting Pet. App. A8) (emphasis added). The government was correct that this Court lacked jurisdiction in *Gray* under Section 1259 where, as here, the CAAF dismissed the writ-appeal petition and did not grant relief, but it was incorrect in its assumption that the CAAF construed Gray's filing as a petition under Section 867(a)(3). As discussed above and *infra*, the CAAF treats writ-appeal petitions as distinct from petitions for review under Section 867(a)(3).

of Military Appeals), has long treated writ-appeal petitions differently from petitions for review under Section 867(a)(3). "Because the issuance of [an extraordinary] writ is a matter vested in the discretion of the court to which the petition [for that writ] is made," a higher court conducting appellate review determines whether the court that granted or denied the petition "abused its discretion by [issuing or] failing to issue the writ." *Cheney* v. *United States Dist. Court*, 542 U.S. 367, 391 (2004); see *Roche* v. *Evaporated Milk Ass'n*, 319 U.S. 21, 25-26 (1943) (explaining that reviewing court determines whether "the case was an appropriate one for the exercise" of a subordinate court's "discretion[ary]" power to "grant[] or with[o]ld" a common-law writ). A writ-appeal petition in the CAAF, however, does not seek such traditional appellate review and instead seeks a form of discretionary relief from the CAAF.

In a proceeding on a writ-appeal petition, the CAAF considers the record developed in the lower military courts as well as "materials filed * * * [in] the appeal to [the CAAF]" to determine whether a "decision on the writ appeal can be reached." *Denedo* v. *United States*, 66 M.J. 114, 117 (2008), aff'd, 556 U.S. 904 (2009). If it can reach a decision, the CAAF's resolution of the writ appeal then appears to reflect its *own* determination whether extraordinary relief such as mandamus should be granted, rather than whether the CCA abused its discretion when it previously addressed that same question. See, *e.g.*, *Hasan* v. *Gross*, 71 M.J. 416, 416, 418 & n.2 (C.A.A.F. 2012) (per curiam) (applying the "stand-

ard required for mandamus relief" in a writ-appeal petition from the denial of such relief and concluding that the accused "met his burden" under that standard).[5]

The CAAF's longstanding practice thus appears to involve its adjudication of writ-appeal petitions in proceedings that rest on its own authority to issue an extraordinary writ, as distinct from its statutory authority to grant a petition for review under Section 867(a)(3). Indeed, the fact that the CAAF has long allowed the *government* to file writ-appeal petitions illustrates that its consideration of such petitions has not rested on its authority under Section 867(a)(3), which authorizes review based only on a "petition of the *accused*," 10 U.S.C. 867(a)(3) (emphasis added). See *United States* v. *Caprio*, 12 M.J. 30, 30-33 (C.M.A. 1981) (holding that government may challenge denial of mandamus without a Judge Advocate General's certification of the matter for review under Section 867(a)(2)'s predecessor; noting, *inter alia*, that the government "could submit directly to us a new petition for extraordinary relief" raising the same issues).[6]

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[5] See also, *e.g.*, *United States* v. *Beck*, 56 M.J. 426, 426-427 (C.A.A.F. 2002) (directly resolving whether to issue "an extraordinary writ" and characterizing the "writ petition [as] ask[ing] us"—the CAAF—for relief); *Loving* v. *Hart*, 47 M.J. 438, 441-447 (C.A.A.F.) (affirming denial of mandamus on writ-appeal petition by deciding the question afresh), cert. denied, 525 U.S. 1040 (1998); *id.* at 441 (noting that the CAAF itself had "jurisdiction to act on appellant's [mandamus] petition" and "to issue a writ"); *Vanover* v. *Clark*, 27 M.J. 345, 346-348 (C.M.A. 1988) (treating mandamus petition as a writ-appeal petition for review of denial of mandamus by lower court; resolving mandamus directly).

[6] The government may obtain CAAF review of CCA decisions outside the context of a writ-appeal petition by "utiliz[ing] the certified question process" under Section 867(a)(2). *Caprio*, 12 M.J. at 33

b. In this case, petitioner opted to file a writ-appeal petition in the CAAF, invoking CAAF rules that clearly distinguish between a writ-appeal petition and a petition for review under Section 867(a)(3). In light of that choice, the CAAF permissibly took the writ-appeal petition at face value. And because the CAAF considers a writ-appeal petition only if the CAAF *itself* has jurisdiction to grant the extraordinary writ that petitioner sought, see pp. 11-13 & n.5, *supra*, the CAAF correctly dismissed petitioner's writ-appeal petition for lack of jurisdiction. See Pet. App. 7a.

The All Writs Act, 28 U.S.C. 1651(a), authorizes this Court and "all courts established by Act of Congress" to "issue all writs necessary or appropriate in aid of their respective jurisdictions." *Ibid.* Military courts established by Congress, "like Article III tribunals, are [thus] empowered to issue extraordinary writs." *Denedo*, 556 U.S. at 911. But "the All Writs Act and the extraordinary relief the statute authorizes are not a

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(discussing Section 867(a)(2)'s predecessor). The CAAF has determined that a CCA's decision on a request for an extraordinary writ is encompassed within a "'case'" for which Section 867(a)(2) provides mandatory CAAF review upon certification by a Judge Advocate General. *LRM* v. *Kastenberg*, 72 M.J. 364, 367 (C.A.A.F. 2013) (reviewing CCA's dismissal of mandamus petition); accord *United States* v. *Curtin*, 44 M.J. 439, 440 (C.A.A.F. 1996) (same for denial of mandamus petition); see, *e.g.*, *Howell* v. *United States*, 75 M.J. 386, 388 n.2, 389 (C.A.A.F. 2016). The CAAF has not extended the reasoning of its Section 867(a)(2) decisions to petitions for review under Section 867(a)(3). See *Randolph* v. *HV*, 76 M.J. 27, 30 (C.A.A.F. 2017) (declining to extend *LRM* and *Curtin* to permit Section 867(a)(3) review of Article 6b mandamus decisions by the CCAs before 2017 amendments to Article 6b); cf. 10 U.S.C. 806b(e)(3)(C) (enacted 2017) (providing that the CAAF shall give priority to its review of CCA Article 6b decisions "as determined under the rules of the [CAAF]").

source of subject-matter jurisdiction." *Id.* at 913 (citing *Clinton* v. *Goldsmith*, 526 U.S. 529, 534-535 (1999)). A court's power to issue an extraordinary writ "in aid of" its jurisdiction, 28 U.S.C. 1651(a), "is contingent on that court's subject-matter jurisdiction over the case or controversy." *Denedo*, 556 U.S. at 911. As such, the CAAF's authority under the All Writs Act is limited to "issuing process 'in aid of' its existing statutory jurisdiction." *Goldsmith*, 526 U.S. at 534-535.

The CAAF's statutory jurisdiction is "narrowly circumscribed," *Goldsmith*, 526 U.S. at 535, and does not extend to review of post-sentencing decisions regarding good-time credit made by military detention authorities. Congress has authorized the CAAF to act as an appellate tribunal "only with respect to * * * the findings and sentence" resulting from a court-martial or "a decision, judgment, or order by a military judge." 10 U.S.C. 867(c)(1). Cf. 10 U.S.C. 867(c) (2012). But a good-time-credit determination is not made by a military judge, and it is distinct from the sentence imposed by a court-martial because it concerns subsequent military detention pursuant to that sentence.

"The responsibility for determining how much good time credit, if any, will be awarded is an administrative responsibility, vested in the commander of the confinement facility." *United States* v. *Spaustat*, 57 M.J. 256, 263 (C.A.A.F. 2002). That executive determination, made after the court-martial proceedings that produce a sentence, in no way alters a sentence by "revising a court-martial finding and sentence to increase the punishment," *Goldsmith*, 526 U.S. at 536. And because "there is no source of continuing jurisdiction for the CAAF over all [such] actions *administering* sentences that the

CAAF at one time had the power to review," *ibid.* (emphasis added), the CAAF lacks jurisdiction to entertain a request for relief from good-time determinations under the All Writs Act.

Judicial review of good-time-credit determinations is instead available in an Article III court, which would have jurisdiction to conduct habeas-corpus review of the legality of petitioner's ongoing detention under 28 U.S.C. 2241. See, *e.g.*, *Valois* v. *Commandant, USDB-Fort Leavenworth*, 638 Fed. Appx. 796, 798-799 (10th Cir. 2016) (affirming district court's merits resolution of service member's habeas petition; rejecting a good-time-credit claim materially identical to petitioner's). Such post-judgment "habeas corpus jurisdiction" over military prisoners by Article III courts "has been exercised from the beginning." *Gusik* v. *Schilder*, 340 U.S. 128, 132-133 (1950); see, *e.g.*, *Ex parte Reed*, 100 U.S. 13, 20, 23 (1879); cf. *Schlesinger* v. *Councilman*, 420 U.S. 738, 747 (1975) ("Habeas corpus proceedings" in the Article III courts "have been and remain by far the most common form of collateral attack on court-martial judgments."). Cf. also *Weaver* v. *Graham*, 450 U.S. 24, 27-28 & n.6 (1981) (conducting review of state habeas challenge to good-time-credit determination by state officials). And where alternative statutory "remedies, such as habeas corpus, are available," extraordinary relief under the All Writs Act is not. *Denedo*, 556 U.S. at 911; see *id.* at 917 (an extraordinary writ is appropriate where "other judicial processes for correction are unavailable"); *Goldsmith*, 526 U.S. at 540 (extraordinary relief under the All Writs Act is not "'necessary or appropriate'" where "alternative statutory avenues of relief are available").

3. Petitioner contends (Pet. 21-25) that the CAAF's dismissal of his writ-appeal petition conflicts with this Court's decision in *Denedo*. That is incorrect.

*Denedo* addressed the authority of a military CCA under the All Writs Act to entertain a writ of *coram nobis*, which authorizes a court to reexamine and correct certain flaws in "its earlier judgment" as part of the court's ongoing authority "to protect the integrity of [such] judgments." *Denedo*, 556 U.S. at 916. More specifically, *coram nobis* permits a court "to avoid the rigid strictures of judgment finality" in order to "redress a fundamental error" in a judgment. *Id.* at 910-911.

This Court concluded in *Denedo* that the All Writs Act conferred on military courts the authority to grant *coram nobis* "relief from final judgments in extraordinary cases when it is shown that there were fundamental flaws in the proceedings leading to their issuance," 556 U.S. at 916, *i.e.*, where "an earlier judgment of conviction was flawed in a fundamental respect," *id.* at 917. The Court emphasized that the All Writs Act did not *itself* provide jurisdiction to grant relief. *Id.* at 913. Instead, the CCA's underlying "jurisdiction to hear an appeal of [Denedo's] judgment of conviction" provided the requisite jurisdiction to entertain a "petition for *coram nobis*" to correct that judgment. *Id.* at 914. In other words, *Denedo* determined that the CCA had statutory jurisdiction to consider a "request for *coram nobis*" because that request was "simply a further 'step in [a] criminal' appeal" challenging a court-martial judgment. *Ibid.* (citation omitted).

That rationale has no application here. Petitioner's request for a writ of mandamus directed to the military officials detaining him does not seek review of a prior judgment. Indeed, petitioner seeks no change to the

findings of guilt or the sentence on which he is being detained. Cf. Pet. 22 (acknowledging that good-time credit is "not technically part of a sentence adjudged at trial"). Petitioner instead merely attempts to challenge a subsequent administrative calculation of good-time credit that he may in the future earn in serving his sentence. That good-time calculation necessarily takes petitioner's sentence as a given. The CAAF's statutory jurisdiction to hear an appeal in petitioner's case and its authority to alter a prior judgment on review are therefore irrelevant here, because its limited jurisdiction does not confer "continuing jurisdiction * * * over all [such] actions administering sentences that the CAAF at one time had the power to review." *Goldsmith*, 526 U.S. at 536.

4. Finally, this case would be a poor candidate for this Court's review because petitioner's underlying good-time-credit claim has no merit and, for that reason, no further proceedings are warranted in this case. Petitioner's claim rests on the proposition that the Department of Defense lacks authority to prescribe good-time-credit rules governing the Air Force. See Pet. App. 27a. But as the AFCCA explained, petitioner has identified no statutory authority specifically addressing good-time credit, nor has he identified provisions that reserve authority for good-time-credit rules to a Service Secretary. *Id.* at 28a. Petitioner thus has identified no sound reason to conclude that DoD good-time-credit rules adopted for all military services should not apply to the Air Force.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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