No. 20-301

In the Supreme Court of the United States

TIMOTHY B. HENNIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

BRIEF OF THE UNITED STATES AIR FORCE APPELLATE DEFENSE DIVISION AS AMICUS CURIAE SUPPORTING PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The United States Air Force Appellate Defense Division (ADD) respectfully submits this brief as *amicus curiae* in support of Petitioner. The ADD consists of active duty, reserve, and civilian attorneys who provide statutory representation to Airmen convicted by courts-martial. In an effort to protect Airmen and Air Force retirees from the same fate as Petitioner, the ADD respectfully requests this Honorable Court grant Petitioner's writ of certiorari.

SUMMARY OF THE ARGUMENT

As Petitioner aptly observes, this is a case without precedent involving significant constitutional and statutory questions. Petition for Writ of Certiorari, *United States v. Hennis*, 10-11 (No. 20-301). Petitioner's case also established a procedure whereby the military and the states can tandemly employ their "vastly superior resources" to try and retry defendants similarly situated to Petitioner. This scenario is particularly unjust as applied to military personnel.

By virtue of their decision to voluntarily put themselves in harm's way to defend the nation, servicemembers are subject to the Uniform Code of Military Justice (UCMJ) and corresponding regulations pertaining to trials by courts-martial. *See generally* 10 U.S.C. §§ 801-946a.[2] In several significant respects, this overarching military justice system affords less procedural protections to servicemembers than

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[1] Rule 37 statement: All parties were timely notified and consented to the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

[2] Unless otherwise indicated, references to the United States Code pertain to those laws currently in effect.

those provided to civilians in state courts. *Contra Ortiz v. United States*, 138 S. Ct. 2165, 2175 (2018) (citation omitted). For example, as Petitioner notes, grand and petit juries—which "count amongst our 'most essential rights and liberties'"—are unavailable to an accused military member. Petition for Writ of Certiorari, *Hennis*, (No. 20-301) at 33 (quoting *Duncan v. Louisiana*, 391 U.S. 145, 152-54 (1968)). A servicemember can also be convicted by individuals who do not represent a cross-section of the military population and who have been personally selected to serve as the triers of fact by the same individual who referred the matter to trial by court-martial. Most significantly, the Government can obtain a conviction and then imprison a servicemember for life with less than a unanimous verdict.

This brief provides further explanation on these and other ways the military justice system differs from state jurisdictions. These differences illustrate how the lives and liberty of servicemembers like Petitioner are especially endangered by prosecutions that may run afoul of double jeopardy protection.[3]

[3] Division E of the Military Justice Act of 2016 (MJA) modified numerous provisions of the UCMJ. *See* National Defense Authorization Act of Fiscal Year 2017, Pub. L. 114-328, 130 Stat. 2000 (2016). Executive Order 13825 (March 1, 2018) subsequently amended various sections of the Manual for Courts-Martial, implementing the MJA's changes and prescribing effective dates. *See* Exec. Order. No. 13825, 83 Fed. Reg. 9889, 9890 (March 8, 2018). With certain exceptions, most of the MJA's changes apply to cases referred to courts-martial on or after January 1, 2019, regardless of the date of the alleged offense. *See generally* Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, Chapter 3 (Jan. 18, 2019). The procedures described herein would apply to prospective courts-martial with offenses occurring prior to the 1992 amendment of Article 3(a), UCMJ, 10 U.S.C. § 803(a) (1982), the purported source of the military's jurisdiction over Petitioner. *See* Petition for Writ of Certiorari, *Hennis*, (No. 20-301) at 12-14.

ARGUMENT

"No persons should be more entitled to protection of their constitutional rights than the servicemen engaged in protecting the sovereignty of the United States." *Constitutional Rights of Military Personnel, Summary—Report of Hearings, Committee on the Judiciary U.S. Senate*, S. Res. 58, 88th Cong., 1st Session, at III. Yet, for the less than one-half of one percent of Americans willing to serve on active duty,[4] they do not possess many of the same rights, or enjoy similar application of such rights, as those afforded to their citizen brethren. *See*, *e.g.*, *Parker v. Levy*, 417 U.S. 733, 758 (1974) (discussing how the First Amendment applies differently to servicemembers). This is not to say that the military still employs the "rough form of justice" from its past. *Reid v. Covert*, 354 U.S. 1, 35-36 (1957) (plurality opinion). And this brief does not suggest that deficits in the military legal system warrant reexamination of this Court's traditional deference to the military on issues of discipline and justice. *See*, *e.g.*, *Chappell v. Wallace*, 462 U.S. 296, 300 (1983) ("The need for special regulations in relation to military discipline, and the consequent need and justification for a special and exclusive system of military justice, is too obvious to require extensive discussion; no military organization can function without strict discipline and regulation that would be unacceptable in a civilian setting."). Rather, the ADD seeks to provide this Court with important context for the process servicemembers face when prosecuted under the UCMJ. This information, while far from exhaustive, should further highlight the inequity and

[4] *See* Demographics of the U.S. Military, Council on Foreign Relations, https://www.cfr.org/article/demographics-us-military (last visited October 7, 2020).

injustice in allowing the military to prosecute an individual in its system of justice, where its state's counterpart has already acquitted that individual of the same offense(s).

I. PRETRIAL PROCEEDINGS

Before a case even makes its way to trial, there are significant procedural differences between state justice systems and the military justice system.

A. Grand Juries

This Court has long recognized the grand jury as a protector of "citizens against unfounded criminal prosecutions." *Branzburg v. Hayes*, 408 U.S. 665, 686-87 (1972) (citing *Wood v. Georgia*, 370 U.S. 375, 390 (1962)). Indeed, it is a bulwark "standing between the accuser and accused . . . to determine whether a charge is founded upon reason or was dictated by an intimidating power or malice and personal ill will." *Wood*, 370 U.S. at 390; *but see Ex parte Wilson*, 114 U.S. 417, 429 (1885) (holding that the Grand Jury Clause does not apply to misdemeanors). Although the states are not constitutionally required to utilize grand juries, *see*, *e.g.*, *Rose v. Mitchell*, 443 U.S. 545, 557 n.7 (1979) (citing *Hurtado v. California*, 110 U.S. 516 (1884)), dozens have made this indictment process an integral aspect of their judicial systems and a right of their citizenry. *See*, *e.g.*, ALA. CONST. art. XIV, § 8, amend. 598; ALASKA CONST. art. I, § 8; CAL. CONST. art I, §§ 14, 23; FLA. CONST. art. I, § 15(a); Idaho Const. art I, § 8; MONT. CONST. art. II, § 20; OHIO CONST. art. I, § 10; UTAH CONST. art. I, § 13; WASH. CONST. art. I, §§ 25-26.

For military members suspected of offenses that could earn them a lifetime of confinement or even death, a grand jury is not the body that determines whether probable cause exists to proceed to trial. *See Solorio v. United States*, 483 U.S. 435, 453 (1987) (Marshall, J., dissenting) (noting that the Grand Jury Clause does not apply to those being tried by courts-martial). Rather, it is a single individual—a Preliminary Hearing Officer (PHO)—who presides over a preliminary hearing pursuant to Article 32, UCMJ, 10 U.S.C. § 832.[5] The scope and procedures of these hearings, and the roles of the PHO therein, differ significantly from grand juries.

As a starting point, a grand jury is randomly chosen[6] whereas a commander, acting as the convening authority, appoints the PHO. R.C.M. 405(c); R.C.M. 405(d)(1). Thus, an individual with a vested interest in ensuring good order and discipline within his organization is responsible for selecting the single entity that will initially review the evidence against an accused and recommend disposition. And despite the requirement that a PHO be impartial, there is no prohibition against selecting a PHO that falls under the chain of command of the convening authority. R.C.M. 405(d)(1). Consequently, there may be a vestige of potential bias or influence in Article 32 preliminary hearings that is not similarly present in grand juries.

The capabilities and neutrality of the PHO are crucial, as that individual is solely responsible for evaluating the evidence against an accused and determining

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[5] A preliminary hearing is only required for general courts-martial, which is the functional equivalent to felony trials in that a member can be confined for more than one year. *See* R.C.M. 201(f); R.C.M. 405(a).

[6] *See*, *e.g*, IDAHO CODE ANN. § 2-206 (2019); N.J. STAT. ANN. § 2B:21-2(a) (2020).

whether probable cause exists.[7] R.C.M. 405(l)(2)(C); R.C.M. 405(l)(2)(J). By contrast, states often require at least twelve members to sit on grand juries. *See, e.g.*, I.C.R. 6.5(c); N.J. Ct. R. 3:6-8(a). These jurors collectively hear testimony, receive evidence, and deliberate to determine whether probable cause exists to issue an indictment. *See, e.g.,* I.C.R. 6.5(a); Serving on a Maryland Grand Jury, https://mdcourts.gov/sites/default/files/import/juryservice/pdfs/grandjuryservice.pdf, (last visited October 7, 2020). Moreover, the scope of a PHO's duties is not limited to just a probable cause determination; the PHO must also determine "whether the convening authority has court-martial jurisdiction over the accused and over the offense." R.C.M. 405(a). If the PHO concludes the specification fails to allege an offense, the legal office prosecuting the case can fix the defects prior to the case going to trial. The Government can likewise seek to cure any jurisdictional issues, if possible. The PHO can also recommend "that the charges and specifications be amended or that additional charges be preferred." R.C.M. 405(l), Discussion. These additional responsibilities tend to exceed the duties of a grand jury, and each can benefit the Government by helping to identify potential legal problems with the prosecution of the case.[8]

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[7] Although a military attorney typically acts as a PHO, a convening authority may also appoint a commissioned officer as PHO "due to exceptional circumstances." R.C.M. 405(d)(1). However, the Air Force has expressly limited PHOs to military attorneys. AFI 51-201 at ¶ 7.2.1.2.

[8] A convening authority can direct a preliminary hearing notwithstanding an accused's waiver of the hearing. R.C.M. 405(m).

One area where an Article 32 preliminary hearing was traditionally believed to provide more protections than those afforded through the typical grand jury process was the ability of an accused to question witnesses. *See* R.C.M. 405(f)(8) (2012). This right is not as expansive as it appears, however. For example, the victim of an offense is no longer required to testify.[9] Article 32(d)(3), UCMJ, 10 U.S.C. § 832(d)(3); *see also* R.C.M. 405(h)(2)(A)(iii). Civilian witnesses may not appear either, as a PHO lacks subpoena power to compel their production.[10] R.C.M. 405(h)(2)(B)(iii). As for military witnesses, the Government may decline to produce a defense-requested witness if it deems the witness's testimony to be cumulative, irrelevant, or unnecessary. R.C.M. 405(h)(2)(A)(i). If the PHO agrees, then the witness will be unavailable for the hearing. R.C.M. 405(h)(2)(A)(ii). But even if the PHO concludes the witness should testify, the witness's commanding officer ultimately determines whether that witness will be available and in what capacity (i.e., in person, via telephone, etc.). R.C.M. 405(h)(2)(A)(iii). The commander's decision is final. *Id.*

Perhaps the most significant difference between grand jury proceedings and an Article 32 preliminary hearing relates to the disposition stage. If a grand jury determines that probable cause does not exist, it will put forward a "no bill," and no

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[9] A victim who declines to testify at an Article 32 hearing may nevertheless provide "additional information that [the victim] deems relevant to the convening authority's disposition of the charges and specifications." R.C.M. 405(k)(1). An accused and the Government have this same right, *id.*, and an accused can also submit matters in rebuttal. R.C.M. 405(k)(2).

[10] In contrast, many grand juries can compel witnesses. *See, e.g.,* MD R. 4-643 (providing that a subpoena shall be issued: "(1) by the clerk of the circuit court on request of the State's Attorney or the grand jury; or (2) by the grand jury through its foreperson or deputy foreperson.").

indictment is issued. *See, e.g.*, I.C.R. 6.5(e); N.J. Ct. R. 3:6-8(b). However, a PHO's disposition recommendation is *non-binding* on the convening authority. R.C.M. 405(l)(2)(J). So even if a commander's hand-selected PHO finds the allegations unsupported by probable cause and recommends dismissal of the charges, the convening authority may still refer the charges to court-martial.

B. Pretrial Confinement

Another significant pretrial process that differs between the civilian and military courts is pretrial confinement. "The law favors the release of defendants pending adjudication of charges." ABA, Criminal Justice Section Standard 10-1.1 (2020). In most civilian courts, "[t]he *judge* or *judicial officer* decides whether to release a defendant on personal recognizance or unsecured appearance bond, release a defendant on a condition or combination of conditions, temporarily detain a defendant, or detain a defendant according to the procedures outlined in these Standards." *Id.* (emphasis added). Furthermore, the *judicial officer* is enjoined to "assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and protect the community, victims, witnesses or any other person." *Id.* at 10-1.2; *see also* MD R. 4-216.1(b)(1)(B) ("This Rule shall be construed to permit the release of a defendant pending trial except upon a finding by the *judicial officer* . . .) (emphasis added).

In the military, decisions regarding pretrial confinement are made not by a judge or judicial officer, but by commissioned officers with potentially no legal training. Specifically, the commander of a commissioned officer may order that officer

into pretrial restraint—which includes pretrial confinement—and any commissioned officer can order the pretrial restraint of any enlisted person.[11] R.C.M. 304(b). Thereafter, a separate "neutral and detached" commissioned officer must determine whether continued confinement is necessary within seven days; however, this officer once again does not have to possess legal training. R.C.M. 305(i)(2). If an accused remains confined, a military judge will not "review the propriety of pretrial confinement" until charges have been referred to trial. R.C.M. 305(j). Even then, the accused, through defense counsel, must first submit a motion for appropriate relief. *Id*. An accused may be confined for days, weeks, or months before his case is referred to trial and before the accused may seek release from a military judge. This is in sharp contrast to the case of a civilian defendant who has a judge or judicial officer make the decision regarding pretrial release at the start of the process.

II. TRIAL PROCEEDINGS.

There are many procedural differences between state trials and courts-martial. Preeminent among them are those relating to the jury, known as a "panel" in the military.

A. Panel Selection

The states must ensure the impartiality of their juries through prescribed methods that seek fair cross-sections of their communities, without including or excluding particular individuals or classes. *See Taylor v. Louisiana*, 419 U.S. 522

[11] Within 72 hours of ordering the member into confinement, or within 72 hours of notification that the commander's member was confined, the commander must determine whether pretrial restraint will continue. R.C.M. 305(h)(2)(A).

(1975); *Batson v. Kentucky*, 476 U.S. 79 (1986). These methods typically involve the random selection of potential jurors. *See*, *e.g.*, IDAHO CODE ANN. § 2-206 (2019); N.J. STAT. ANN. 2B:21-2(a) (2020). No such random selection exists in the military. Instead, the convening authority—potentially the same individual who selected the PHO—details the individuals who may sit on the panel. R.C.M. 503(a).

The convening authority chooses members who "in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament." Article 25(e)(2), UCMJ, 10 U.S.C. § 825(e)(2). Notably, however, there is little guidance as to how a convening authority actually applies these criteria to select or rule out certain nominees. *See United States v. Witham*, 47 M.J. 297, 304 (C.A.A.F. 1997) (Cox, J., concurring) (observing that "the convening authority has an almost unlimited ability to choose the court members."). This can and has led to allegations of panel stacking. *See*, *e.g.*, *United States v. Smith*, 27 M.J. 242 (C.M.A. 1988) (addressing an installation policy to detail "hardcore" female members to sex offense cases); *United States v. Lynch*, 35 M.J. 579 (C.G.C.M.R. 1992) (addressing convening authority's decision to nominate panel members with substantial seagoing experience to a court-martial involving allegations of negligently hazarding a vessel). The panel members are also invariably under the convening authority's command, "creating opportunities for subtle or sometimes blatant and unlawful pressure." Major Stephen A. Lamb, *The Court-martial Panel Selection Process: A Critical Analysis,* 137 MIL. L. REV. 103, Summer

1992, at 103 n.5 (quoting Phyllis W. Jordan, *Navy Justice: A Conflict of Interest?*, VA. PILOT, Sept. 22, 1991 at A1, A8).

In addition, a panel member is almost always superior in rank or grade to an accused. Article 25(e)(1), UCMJ, 10 U.S.C. § 825(e)(1). Consequently, a young Airman may not be able to defend himself before his peers who share similarities in both age or experience level. That Airman will instead be judged by a cadre of senior military personnel—individuals who are often perceived to mete out stiffer sentences.[12] *See*, *e.g.*, *United States v. McClain*, 22 M.J. 124, 131 (C.M.A. 1986) ("Perhaps the application of the standards set forth in Article 25(d)(2) leads naturally to the selection of court members who are more likely to impose heavier punishments than would be true if different standards were used or no standards at all. Perhaps, for example, old, educated court members are harsher than young, ignorant court members."); *see also* Michael I. Spak and Jonathan P. Tomes, *Courts-Martial: Time to Play Taps?*, 28 SW. U. L. REV. 481, 522 (1999) (observing that the most experienced panel members "will almost certainly be the higher ranking servicemembers that would ordinarily adjudge stiffer sentences.") (citations omitted).

B. Peremptory Challenges

The right to exercise peremptory challenges is "one of the most important of the rights secured to the accused." *Pointer v. United States*, 151 U.S. 396, 408 (1894). It "reinforc[es] a defendant's right to trial by an impartial jury," *United States v.*

[12] An enlisted member can request a panel of officers only, or a panel comprised of officers and at least one-third enlisted personnel. Article 25(c)(2), UCMJ, 10 U.S.C. § 825(c)(2).

Martinez-Salazar, 528 U.S. 304, 311 (2000), and "has always been held essential to the fairness of trial by jury." *Lewis v. United States*, 146 U.S. 370, 376 (1892). The removal of jurors through the exercise of peremptory challenges also "satisfies the rule that 'to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *Swain v. Alabama*, 380 U.S. 202, 219 (1965) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

The number of peremptory challenges in the states varies by jurisdiction. In Maryland, for example, each party is permitted four initial peremptory challenges, but a defendant may have ten challenges if facing a term of imprisonment of 20 years or more. MD. R. 4-313(a)(1); R. 4-313(a)(3). For cases involving life imprisonment, a defendant is provided 20 peremptory challenges. MD. R. 4-313(a)(2); *cf.* I.C.R. 24(d) (a defendant in Idaho facing felony challenges has six peremptory challenges, which increases to ten for a capital case); *cf.* N.C. GEN. STAT. § 15A-1217 (2020) (a defendant in North Carolina is permitted six challenges in non-capital cases, which increase to 14 peremptory challenges in a capital case). In any event, there does not appear to be any state that affords a defendant just one peremptory challenge in felony trials. Yet, that is precisely the number initially given to a military accused facing life confinement without the possibility of parole or even death. Article 41(b), UCMJ, 10 U.S.C. § 841(b); R.C.M. 912(g). When viewed in combination with a convening authority's ability to detail potential panel members *ab initio*, the inequity of the military system is apparent. The Government—through the sole discretion of the convening authority—possesses "the functional equivalent of an unlimited number of

peremptory challenges" before the trial even begins. *United States v. Carter*, 25 M.J. 471, 478 (C.M.A. 1988) (Cox, J., concurring). Compared to these powers, as well as the options available to civilian defendants, "the ability of an accused to shape the composition of a court-martial is relatively insignificant." *Witham*, 47 M.J. at 304 (Effron, J., concurring).

C. Panel Size

The purpose of a jury trial "is to prevent government oppression by providing a 'safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge.'" *Burch v. Louisiana*, 441 U.S. 130, 135 (1979) (quoting *Duncan*, 391 U.S. at 156). To this end, "the jury's essential feature lies in the 'interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence.'" *Id*. (quoting *Williams v. Florida*, 399 U.S. 78, 100 (1970)). These purposes can only be fulfilled if a jury is "of a sufficient size to promote group deliberation, free from outside intimidation, and to provide a fair possibility that a cross section of the community would be represented on it." *Id*. (citing *Williams*, 399 U.S. at 100).

Consistent with these ideals, this Court determined that the Constitution requires a minimum six-person jury for the trial of civilian, non-petty offenses. *Ballew v. Georgia*, 435 U.S. 223 (1978). Yet, a special court-martial has just four members. Article 16(c), UCMJ, 10 U.S.C. § 816(c). The punitive exposure for an accused tried by special court-martial before members may be substantial, as a

potential sentence could include, *inter alia*, forfeitures of two-thirds pay per month for up to one year,[13] confinement for up to one year, and a lifelong stigma of a bad conduct discharge.[14] Article 19(a), UCMJ, 10 U.S.C. § 819(a).

At a general court-martial, which typically involves more serious offenses, the potential punishment includes life imprisonment and a dishonorable discharge. Article 18(a), UCMJ, 10 U.S.C. § 818(a) (authorizing "any punishment not forbidden by this chapter, including the penalty of death when specifically authorized"). Only eight members are required on a non-capital general court-martial, and this number could drop to six after challenges for cause and excusals. Article 16(b)(1), UCMJ, 10 U.S.C. § 816(b)(1); Article 29, UCMJ, 10 U.S.C. § 829. Although an eight or six member panel may satisfy constitutional requirements, such composition differs dramatically from the overwhelming number of states that require twelve-member

[13] Forfeitures of pay will vary according to the rank and years of service of an accused. For example, the monthly basic pay for the lowest enlisted grade (E-1) with less than four months of military service is $1,602.30. *See* Monthly Basic Pay Table (effective January 1, 2020), *available at* https://militarypay.defense.gov/Portals/3/Documents/ActiveDutyTables/2020%20Military%20Basic%20Pay%20Table.pdf (last visited October 7, 2020). At even this grade and experience level, two months of two-thirds forfeitures exceeds the $2,000 fine that this Court found significant in *Ballew*. 435 U.S. at 240.

[14] *See Military Judges' Benchbook*, Dept. of the Army Pamphlet 27-9 at 87-89 (Feb. 29, 2020) (sentencing instructions detailing the stigma associated with a punitive discharge and its various repercussions). A bad conduct discharge, like a dishonorable discharge, applies only to enlisted personnel. R.C.M. 1003(a)(8)(B)-(C). The only punitive separation that can be adjudged against commissioned officers is a dismissal. R.C.M. 1003(a)(8)(A). A dismissal is not an authorized punishment at a special court-martial. R.C.M. 201(f)(2)(B)(i).

juries for felony trials. *See* Ronald Malega and Thomas H. Cohen, State Court Organization, 2011, at 10, Table 10 (2011).[15]

D. Lack of Unanimity

Perhaps the greatest disparity between the state and military court systems is the lack of unanimity required to convict in courts-martial. Instead, military panels may return a finding of guilty for any charged offense with at least three-fourths of the members concurring in the result.[16] Article 52(a)(3), UCMJ, 10 U.S.C. § 852(a)(3). Given this Court's recent decision in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), *amicus* will refrain from reiterating the constitutional import of unanimous verdicts for serious crimes. Nevertheless, it cannot be forgotten that the very men and women who vow "to support and defend the Constitution against all enemies foreign and domestic,"[17] now remain the *only* members of American society who do not enjoy the constitutional protection of unanimous verdicts in criminal trials where they face such substantial penalties as imprisonment for life and punitive separations.

CONCLUSION

Petitioner's case provides a roadmap for the military to prosecute similarly situated servicemembers and retirees. Irrespective of whether the military's mission still necessitates disparities between its justice system and those in the states, these

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[15] *Available at* https://www.bjs.gov/content/pub/pdf/sco11.pdf (last visited on October 7, 2020).

[16] For a capitally charged offense, a finding of guilt that is less than unanimous precludes death as a punishment. Article 52(b)(2), UCMJ, 10 U.S.C. §852(b)(2). When the stakes are at their highest, therefore, Congress appears to acknowledge the fairness and greater reliability of unanimous verdicts.

[17] *See* 5 U.S.C. § 3331 (oath required for commissioned officers); 10 U.S.C. § 502 (oath required for enlisted personnel).

disparities are all the more significant when the military seeks to convict an individual who, having been afforded the full panoply of rights under the Constitution, was previously acquitted for the same offense(s) in a state court. This Honorable Court should grant the petition for a writ of certiorari, with the further understanding that future military re-prosecutions will be executed in a system with far fewer procedural protections for those who deserve them most—the selfless men and women of the Armed Services.

Respectfully submitted,

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