**No.**

IN THE

# SUPREME COURT OF THE UNITED STATES

THOMAS M. ADAMS,

*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

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Article 67(a)(3), Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 867(a)(3), provides that the Court of Appeals for the Armed Forces [CAAF] "*shall* review the record in . . . all cases . . . in which, upon petition of the accused and on good cause shown, [the CAAF] has granted a review."

Does the mandate under 67(a)(3) permit the CAAF to deny review where petitioner has presented a meritorious issue?

## PARTIES TO THE PROCEEDINGS

Petitioner is Thomas M. Adams.

The Respondent is the United States of America.

## RELATED PROCEEDINGS

Other than the direct appeals that form the basis for this petition, there are no related proceedings for purposes of S. Ct. R. 14.1 (b)(iii).

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## PETITION FOR A WRIT OF CERTIORARI

The petitioner, Thomas M. Adams, petitions this Court for a writ of certiorari to review the final order of the Court of Appeals for the Armed Forces.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Armed Forces is reported at *United States v. Adams*, 81 M.J. 475 (C.A.A.F. 2021) and reproduced at Petition Appendix ("Pet. App.") 5a-17a. The opinions of the Army Court of Appeals are reported at *United States v. Adams,* No. ARMY 20130693, 2024 CCA LEXIS 25 (A. Ct. Crim. App. Jan 22, 2024); *United States v. Adams*, No. ARMY 20130693, 2020 CCA LEXIS 232 (A. Ct. Crim. App. Jul 13, 2020) (memorandum opinion) (unpublished); and *United States v. Adams,* No. ARMY 20130693, 2017 CCA LEXIS 6 (A. Ct. Crim. App. Jan 6, 2017) (summary disposition) (unpublished) and reproduced at Pet. App. 3a-4a; 19a-35a; and 36a-40a.

## JURISDICTION

The order of the United States Court of Appeals for the Armed Forces that denied reconsideration was entered on November 22, 2024. Pet. App. 1a. This Court has jurisdiction over the timely filed petition under 28 U.S.C. § 1259(1) as the CAAF has previous granted review in this case.

## RELEVANT STATUTORY PROVISION

> (a) The Court of Appeals for the Armed Forces shall review the record in—
>
> (1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;
>
> (2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review; and
>
> (3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

10 U.S.C. § 867(a)(3).

## STATEMENT OF THE CASE

1. Petitioner was originally tried in 2013. In 2017, the Army Court of Criminal Appeals [ACCA] reversed petitioner's conviction and authorized a retrial.

2. Petitioner was tried again in 2018, and the government took 192 days to arraign petitioner. He subsequently filed a motion to dismiss the charges under R.C.M. 707, the military analogue to the Speedy Trial Act [STA]. *United States v. Leonard*, 21 M.J. 67, 70 (C.M.A. 1985). Under R.C.M. 707(a), the government had 120 days to arraign petitioner from the date it placed him in pretrial confinement. The disposition of the motion turned on whether the time after the trial court received the charges was excludable from the speedy trial clock. Failure to satisfy R.C.M. 707(a) results in a dismissal of charges. R.C.M. 707(d).

3. Denying the motion, the trial judge relied on a now-defunct local Rule of Practice 1.1 of the Army Trial Judiciary, which *automatically* excluded so-called "judicial delay"—the docketing time from when the trial judge received the charges to the date of arraignment. *See* United States Army Trial Judiciary, *Rules of Practice Before Army Courts-Martial*, Rule 1.1 (Nov. 2013). Alternatively, the judge attributed the delay to a scheduling conflict with defense, yet he failed to explain why the *entire* docketing time was attributable when defense trial counsel noted its open availability after the conflicted dates.

3. Petitioner raised the R.C.M. 707 violation to the ACCA, which denied relief. Petitioner then raised this claim to the Court of Appeals for the Armed Forces [CAAF]. The CAAF granted review of a separate claim and authorized a sentence rehearing.

4. While petitioner's case was on remand for a sentence rehearing, the CAAF decided *United States v. Guyton*, 82 M.J. 146 (C.A.A.F. 2022). In *Guyton*, the CAAF questioned the validity of Rule 1.1 as contrary to R.C.M. 707. *Id*. at 153. Ultimately, however, the CAAF left open Rule 1.1's validity as it affirmed *Guyton* on other grounds. *Id*. at 153.

5. Based on *Guyton*, petitioner re-raised his R.C.M. 707 claim when his appeal returned to the ACCA for review. The government contended the claim fell outside the scope of the CAAF's sentencing remand, and the ACCA summarily affirmed petitioner's case.

6. Petitioner re-raised his R.C.M. 707 claim to the CAAF. The CAAF denied review. On reconsideration, petitioner submitted that he satisfied the jurisdictional requirements of "good cause," and that, contrary to the CAAF's decisions, it did not have the discretion to deny review once good cause exists. The CAAF denied petitioner's reconsideration without discussion.

## REASONS FOR GRANTING THE PETITION

The case presents an important question of federal law: what is the scope of the highest military court's mandatory appellate jurisdiction? Article 67(a) states that the CAAF "*shall* review" the record in three categories of cases: (1) capital cases, (2) cases where The Judge Advocate General [TJAG] certifies review, and (3) cases where the petitioner shows "good cause." The essence of the question presented is whether the CAAF's review of the third category of cases is mandated where the petitioner satisfies some objective measure of "good cause" or whether review is completely discretionary as the CAAF has suggested.

The proper construction of the statute shows it is the former. If review were completely discretionary, "shall" would have to be read as "may." Not only would this give a permissive meaning to the word "shall" that is contrary to the term's common understanding, *see Bufkin v. Collins*, 145 S. Ct. 728, 737 (2025), but it would mean that "shall" has one meaning for the first two categories of cases and an altogether different meaning for the third category of cases. After all, no one would dispute that the CAAF *must* exercise its appellate jurisdiction in capital cases and in cases the TJAG certifies for review. Even the CAAF has referred to subsection (a)(3) as a "congressional mandate."[1] *See United States v. Rodriquez*, 67 M.J. 110, 114-15 (C.A.A.F. 2010).

Under this construction, petitioner was entitled to have his case heard by the CAAF. He demonstrated a meritorious claim under R.C.M. 707.[2] If "good cause" means anything, it surely means the presentation of a meritorious claim. *Cf. Barefoot v. Estelle*, 463 U.S. 880, 892-893 (1983) (defining "probable cause" for the purposes of a certificate of appealability as "substantial showing of the denial of [a] federal right").

But the CAAF has never addressed the scope of its mandate under Article

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[1] This comports with the original understanding of the CAAF's role. As Professor Edmund M. Morgan, Jr., the lead architect of the UCMJ testified, the court was "necessary to insure uniformity and administration throughout the armed services." Professor Edmund M. Morgan, Jr., Hearings on H.R. 2498, Before a Subcomm. of the House Comm. on Armed Services, 81st Cong., 1st Sess., 604 (1949) [hereinafter House Report].

[2] *Guyton* undermined the judge's ruling, and his failure to explain why, as an alternative, the defense was accountable for docket delay when counsel was available was a clear abuse of discretion. As petitioner highlighted in his petition to the CAAF, docket considerations should rarely be cause for excludable delay. *Cf. United States v. Johnson*, 990 F.3d 661, 666-69 (8th Cir. 2021).

67(a)(3), and its cases do not show a discernable thread. While it has referred to subsection (a)(3) as a "mandate," *Rodriquez*, 67 M.J. at 114, it has also suggested its review is completely discretionary. In *United States v. Rorie*, 58 M.J. 399 (C.A.A.F. 2003), for example, a fractured CAAF likened its petition jurisdiction to this Court's discretionary certiorari practice. *Id*. at 405. Overturning decades of precedent that had previously distinguished its statutory review, *id* at 408-09 (Effron, J., Baker, J., dissenting), *Rorie* implied the CAAF may deny review even if an appellant shows error and material prejudice or other "good cause." *Id*. at 405.

The CAAF made this plainer in *United States v. McGriff*, 78 M.J. 487 (C.A.A.F. 2019) (per curiam). Relying on *Teague v. Lane*, 489 U.S. 288, 296 (1989), *McGriff* iterated that a denial of a CAAF review under subsection (a)(3) does not speak to the merits of the case. *Id*. Yet, if "good cause" means anything, it surely means the presentation of a meritorious claim. *Cf. Barefoot* 463 U.S. at 892-93 (1983) (defining "probable cause" for the purposes of a certificate of appealability as "substantial showing of the denial of [a] federal right").

The need for the Court's intervention to resolve the scope of the CAAF's statutory review is manifest. For one, an unprecedentedly low number of grants of review in recent years suggest that confusion over the discretionary nature of CAAF's review may be resulting in erroneous denials of review on an endemic level. Indeed, the CAAF's "throughput of cases has become so anemic that a compelling case can be made for its termination."[3] Eugene R. Fidell & James A. Young,

[3] While the highest military court once granted around nearly 500 cases annually, *see* Annual Report of the Code Committee on Military Justice, p. 3 (1984), the CAAF's

*Military Justice and Modernity*, 68 Vill. L. Rev. 737, 748 (2024). While these numbers may be explained by a decrease in courts-martial, *id*., notably it is occurring during a prolonged period of sweeping changes to the military justice system, a period when one would reasonably anticipate a significant *increase* in judicial activity.

Moreover, this confusion also harms servicemembers who later seek collateral review of their convictions. Under this Court's decision in *Burns v. Wilson*, 436 U.S. 137 (1953), federal courts are to give "full and fair consideration" to military court decisions. *Id*. at 144. Despite that the CAAF sees its review as not speaking to the merits, federal courts treat the CAAF denials as giving "full and fair consideration" to the claim. *See e.g.*, *Smith v. Commandant*, 50 Fed. Appx. 966, 967 (10th Cir. Nov. 14, 2002). Thus, a military appellant with a meritorious claim may not have his day in court at either the CAAF or in federal district court.

Lastly, the recent changes to the UCMJ include the ability of servicemembers to now seek review to this Court irrespective of whether the CAAF has granted review in their cases. The determination of the proper scope of CAAF's review will prevent an unnecessary influx of cases to this Court that can be properly handled at the CAAF, thereby conserving judicial resources.

This Court should grant review, clarify the scope of Article 67(a), and remand for a new determination on the grant of review.

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number of grants in recent years is approximately two dozen annually. Fidell, 68 Vill L. Rev. at 748. This translates to an average of one decision per judge every three months.

## CONCLUSION

For all these reasons, this Honorable Court should grant the petition for a writ of certiorari.

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