No. _____

IN THE

Supreme Court of the United States

WILLIAM M. HILTON,
Petitioner,

v.

UNITED STATES,
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

Petitioner made an unrebutted showing of good cause to the Court of Appeals for the Armed Forces to review his case. Nevertheless, the court denied review. Did the Court of Appeals for the Armed Forces abuse its discretion by failing to grant review?

PARTIES TO THE PROCEEDING

All parties to this proceeding appear in the caption on the cover page of this petition: Lieutenant Colonel (Lt Col) William M. Hilton, the Petitioner, and the United States, the Respondent.

CORPORATE DISCLOSURE STATEMENT

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

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

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INTRODUCTION

On December 16, 2021, Lt Col Hilton was placed in pre-trial confinement. He languished there for 181 days without charges against him. Then, when the Government finally charged him, it took another 453 days to bring him to trial.

The Constitution demands more. The Sixth Amendment requires that criminal defendants be brought to trial without unreasonable delay. Here, the Government acted with no diligence to either charge Lt Col Hilton or bring him to trial. The Government's failures violated his Sixth Amendment rights.

Making matters worse in this case, servicemembers are provided more speedy trial protections under 10 U.S.C. § 810. Military courts have long recognized that a servicemembers Article 10 rights are more stringent than the Sixth Amendment. Nevertheless, the trial judge and the Air Force Court of Criminal Appeals (Air Force Court) found no error with Lt Col Hilton's protracted pre-trial confinement.

Despite demonstrating both a violation of his constitutional and statutory rights to a speedy trial, the Court of Appeals for the Armed Forces (CAAF) declined to review his case. This was an abuse of discretion. This Court should grant review, vacate the CAAF's decision, and remand for further consideration.

PETITION FOR A WRIT OF CERTIORARI

Lieutenant Colonel (Lt Col) William M. Hilton, United States Air Force, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Armed Forces (CAAF)

denying review of the Air Force Court of Criminal Appeals' (Air Force Court) decision.

DECISIONS BELOW

The decision of the Air Force Court is unreported. It is available at 2025 CCA LEXIS 142, 2025 WL 1013407, and is reproduced at pages 2a-31a. The CAAF's decision in Petitioner's case is not yet reported. It is available at 2025 CAAF LEXIS 865, 2025 WL 3144689, and reproduced at page 1a.

JURISDICTION

The Air Force Court had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866. The CAAF had jurisdiction pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3). The CAAF declined to grant review and issued its order denying review on October 16, 2025. This Court granted Lt Col Hilton's application for extension of time to and including March 15, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1259(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides, in pertinent part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. CONST. amend. VI.

Article 10(b), UCMJ, 10 U.S.C. § 810(b), provides, in pertinent part, "When a person subject to this chapter is ordered into . . . confinement before trial, immediate steps shall be taken . . . to try the person or dismiss the charges and release the person."

Article 67, UCMJ, 10 U.S.C. § 867, provides, in pertinent part, that "[t]he [CAAF] shall review the record in . . . all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on *good cause shown*, the [CAAF] has granted a review." (emphasis added).

STATEMENT OF THE CASE

I. Lt Col Hilton is charged the first time.

On September 9, 2021, the Government charged Lt Col Hilton for allegations related to one victim: E.L. App. Ex. III at 20-21. The investigation into the allegations made by E.L. was run by the Air Force Office of Special Investigations (AFOSI). Special Agent (SA) H.O. was the lead investigator.

During the investigation of E.L.'s allegations, SA H.O. failed to conduct "canvassing" interviews—where AFOSI interviews a subject's friends, family, and co-workers. Trial Tr. at 116-17. These canvassing interviews are conducted for all sexual assault investigations. Trial Tr. at 116. When asked why the canvassing interviews were not carried out in Lt Col Hilton's case, SA H.O. replied "[I]t was missed." Trial Tr. at 117.

Lt Col Hilton had a scheduled arraignment for these charges for April 4, 2022, and trial for May 23, 2022.

II. Another victim is identified.

Then, on December 15, 2021, M.H. made allegations against Lt Col Hilton. Trial Tr. at 36; App. Ex. III at 24-45. Shortly after M.H. made these allegations, the Government ordered Lt Col Hilton into pre-trial confinement December 16, 2021. App. Ex. XVI at 2.

Beginning on January 13, 2022, Lt Col Hilton began asserting his constitutional and statutory rights and demanded a speedy trial. App. Ex. IV at 16.

By January 31, 2022, the Government had interviewed every possible eyewitness, Trial Tr. at 60, and criminally booked Lt Col Hilton on the same day. Trial Tr. at 52. Despite this, AFOSI continued to investigate M.H.'s allegations to conduct canvassing interviews. Trial Tr. at 71. According to one AFOSI agent, this step would not have been necessary if the interviews had been completed during the investigation of E.L.'s allegations. Trial Tr. at 67-68. These canvassing interviews, and the additional investigation they caused, were not completed until June 7, 2022. App. Ex. IV at 35.

III. The Government withdraws and dismisses the original charges, which removed the docketed trial date.

On March 15, 2022, the Government dismissed the original charges against Lt Col Hilton. App. Ex. IV at 41. This removed the original dates for arraignment and trial from the docket. Lt Col Hilton was charged again on June 15, 2022. App. Ex. III at 114-17.

On these new charges, Lt Col Hilton was not arraigned until September 15, 2022. App. Ex. IX at 6. Trial was not scheduled until March 13, 2023, which was the Government's first available ready date. App. Ex. III at 181. From the date of entry into pre-trial confinement until arraignment, 273 days had passed. Trial Tr. at 14. Until trial, 453 days had passed. R. at 520

IV. The trial judge denies Lt Col Hilton's motion for speedy trial. The Air Force Court summarily dismissed Lt Col Hilton's challenge. The CAAF did the same.

The defense raised a motion to dismiss for speedy trial under Article 10, UCMJ, and the Sixth Amendment. App. Ex. II. The military judge denied the motion, despite finding that 451 days had elapsed between Lt Col Hilton's entry into pre-trial confinement and the start of trial. App. Ex. XVI at 15. This is because, according to the military judge, the Government exercised reasonable diligence in its investigation. App. Ex. XVI at 16. The trial judge also found no prejudice. App. Ex. XVI at 14-15.

Despite spending 451 days in pre-trial confinement before trial—and 181 days in confinement without charges—the Air Force Court found that the speedy trial problem required neither "discussion [n]or relief." Pet. App. 5a. The CAAF likewise summarily denied review. Pet. App. 1a.

REASONS FOR GRANTING THE PETITION

The CAAF must review all cases where a petitioner demonstrates good cause. 10 U.S.C. § 867. Lt Col Hilton showed good cause because the lower courts erred in finding no speedy trial violation. The CAAF abused its discretion by failing to grant review of Lt Col Hilton's case.

This Court should grant review and remand to the CAAF. In so doing, this Court should instruct the CAAF that it has a statutory obligation to grant review in all cases where good cause is shown.

I. The CAAF's denial shows that it has improperly narrowed the meaning of "on good cause shown," which this Court can and should review.

A. By statute, the CAAF is required to review all cases where a petitioner shows "good cause."

Congress requires the CAAF to review three categories of cases. Two are "mandatory" categories: capital cases and cases sent to the CAAF by the Judge Advocate General. 10 U.S.C. § 867. While the second category is "neutral as to which party (an accused or the Government) may be the one on whose behalf a Judge Advocate General will act . . . . in practice, most of the certified issues are submitted in cases where the accused has triumphed in the court below." *United States v. Caprio*, 12 M.J. 30, 31 n.1 (C.M.A. 1981). Recent experience is consistent with that observation. Even though the United States prevails in the vast majority of cases decided by the Courts of Criminal Appeals, of the twenty cases certified to the CAAF by a Judge Advocate General during the CAAF's October 2023 and October 2024 Terms, nineteen were certified upon request of the Government after losing at a Court of Criminal Appeals.[1]

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[1] *United States v. Hunt*, __ M.J. __, No. 25-0257/AF, 2025 CAAF LEXIS 734 (C.A.A.F. Sep. 2, 2025) (docketing certificate for review with United States as appellant); *United States v. Mendoza*, __ M.J. __, No. 25-0244/AR, 2025 CAAF LEXIS 690 (C.A.A.F. Aug. 20, 2025) (docketing certificate for review with United States as appellee); *United States v. Ixcolgonzalez*, __ M.J. __, No. 25-0243/MC, 2025 CAAF LEXIS 685 (C.A.A.F. Aug. 19, 2025) (docketing certificate for review with United States as appellant); *United States v. Armsbury*, __ M.J. __, No. 25-0233/AR, 2025 CAAF LEXIS 655 (C.A.A.F. Aug. 6, 2025) (same);

The final category of cases is "discretionary." But that discretion is limited by Congressional mandate: the CAAF "shall" review the record in "all cases" that have been reviewed by a Court of Criminal Appeals "upon petition of the accused and on good cause shown." 10 U.S.C. § 867(a)(3). Discussing that provision, the CAAF has stated that subsection (a)(3) "directs this court to review cases which have been reviewed by a Court of Criminal Appeals and where there is a 'petition of the accused' and 'good cause shown.' The statute clearly establishes that both of these predicates must exist before the congressional mandate to review a case arises." *United States v. Rodriguez*, 67 M.J. 110, 114-15 (C.A.A.F. 2009).

United States v. Ellis, __ M.J. __, No. 25-0197/AR, 2025 CAAF LEXIS 481 (C.A.A.F. June 23, 2025) (same); *United States v. Kershaw*, __ M.J. __, No. 25-0117/AF, 2025 CAAF LEXIS 408 (C.A.A.F. May 27, 2025) (same); *United States v. Rocha*, __ M.J. __, No. 25-0157/AF, 2025 CAAF LEXIS 352 (C.A.A.F. May 5, 2025) (same); *United States v. Deremer*, __ M.J. __, No. 25-0158/MC, 2025 CAAF LEXIS 350 (C.A.A.F. May 5, 2025) (same); *United States v. Ford*, __ M.J. __, No. 25-0143/AR, 2025 CAAF LEXIS 306 (C.A.A.F. Apr. 22, 2025) (same); *United States v. Jones*, __ M.J. __, No. 25-0141/AR, 2025 CAAF LEXIS 310 (C.A.A.F. Apr. 22, 2025) (same); *United States v. Calvillomagana*, __ M.J. __, No. 25-0142/AR, 2025 CAAF LEXIS 315 (C.A.A.F. Apr. 22, 2025) (same); *United States v. Malone*, __ M.J. __, No. 25-0140/AR, 2025 CAAF LEXIS 299 (C.A.A.F. Apr. 21, 2025) (same); *United States v. Serjak*, 85 M.J. 407 (C.A.A.F. 2025) (same); *United States v. Hennessy*, 85 M.J. 396 (C.A.A.F. 2025) (same); *United States v. Moore*, 85 M.J. 394 (C.A.A.F. 2025) (same); *United States v. Patterson*, 85 M.J. 320 (C.A.A.F. 2025) (same); *United States v. Downum*, __ M.J. ___, No. 24-0156/AR, 2024 CAAF LEXIS 315 (C.A.A.F. May 14, 2024) (same); *United States v. Davis*, __ M.J. ___, No. 24-0152/AR, 2024 CAAF LEXIS 314 (C.A.A.F. May 14, 2024) (same); *United States v. Harborth*, 84 M.J. 344 (C.A.A.F. 2024) (same); *United States v. Flanner*, 84 M.J. 303 (C.A.A.F. 2024) (same).

In a three-to-two decision, the CAAF grappled with the discretionary nature of its review when considering the propriety of an abatement *ab initio* due to an appellant's death. *United States v. Rorie*, 58 M.J. 399 (C.A.A.F. 2003). The majority found the CAAF's "petition authority is more akin to the writ authority exercised by [this Court], particularly with respect to the primary sources of appeals, the writ of certiorari and the petition for grant of review." *Id.* at 405. Citing congressional intent, the CAAF adopted the position that the question of what cases the CAAF will hear "is a matter of internal management, properly left to [the CAAF's] decision in accordance with guidelines expressed in [the CAAF's] rules." *Id.* (quoting S. REP. NO. 98-53, at 34 (1983)).

Article 67(a)(3), UCMJ, "reflects congressional intent to provide service members with a *significant* opportunity to obtain review by an independent, civilian tribunal, without requiring our court to grant full review in *every* case." *Id.* (citing *United States v. Byrd*, 53 M.J. 35, 36-37 (C.A.A.F. 2000)); S. REP. NO. 98-53, at 34 (1983)) (emphasis added). The CAAF does not have the discretion to deny review where good cause is shown upon a timely petition.

Recently, one judge on the CAAF explained, "Because we can hear a case does not always mean we should." *Randolph v. HV*, 76 M.J. 27, 35 (C.A.A.F. 2017) (Sparks, J., dissenting). The statute requires the converse though: where the CAAF can hear a case because good cause is shown, it must. *Rodriguez*, 67 M.J. at 114-15.

In equating "good cause" to this Court's standard for review, the CAAF created "unfettered discretion . . . to deny review regardless of the merits of the case."

Id. at 408 (Effron, J., dissenting). The plain language of Article 67, UCMJ, does not support such a narrow construction. As the dissent in *Rorie* pointed out, "[c]ounsel familiar with Supreme Court practice should not confuse the 'good cause' standard under Article 67 with certiorari. Those courts that may review a case by issuing a writ of certiorari are not required to hear a case *merely* because a party demonstrates *viable* legal issues requiring relief." *Rorie*, 58 M.J. at 408 (quoting Legal Services, Dep't of the Army, Pamphlet No. 27-173, Trial Procedure 247 (1992)) (emphasis added).

For the first time in history, this Court can now review cases the CAAF "refused to grant." 28 U.S.C. § 1259. Previously, other than cases that fell within CAAF's mandatory jurisdiction, this Court could only review cases where the CAAF granted review—which inherently meant there was "good cause shown." *See* 28 U.S.C. § 1259 (2018). But the CAAF's abuse of discretion in applying the "good cause" standard is now reviewable, as are the underlying issues brought before it. Granting this petition to correct the CAAF's improper construction of its mandatory "good cause shown" jurisdictional threshold would affect the CAAF's consideration of every petition for a grant of review. The CAAF is not the "supreme court of the military justice system." *McPhail v. United States*, 1 M.J. 457, 462 (C.M.A. 1976). This Court is.

B. Lt Col Hilton demonstrated good cause.

In his petition for grant of review at the CAAF, Lt Col Hilton raised the speedy trial issue discussed in Section II, *infra*. Lt Col Hilton asserted that both the military judge and the Air Force Court erred. Because Lt Col Hilton made a specific showing of good

cause, the CAAF was statutorily required to review his case. By declining to review the case, the CAAF abused its discretion.

II. Lt Col Hilton was deprived of his constitutional and statutory rights to speedy trial.

Criminal defendants have a Sixth Amendment right to a speedy trial. *Barker v. Wingo*, 407 U.S. 514, 515 (1972). This Court uses a four-factor balancing test to determine whether a speedy trial violation has occurred. *Id.* at 530. Those factors are: (1) length of the delay; (2) the reason for the delay; (3) the defendant's assertion of their speedy trial rights; and (4) prejudice. *Id.*

Military courts have adopted these factors for assessing speedy trial violations both under the Sixth Amendment and Article 10, UCMJ. *See, e.g.*, *United States v. Birge*, 52 M.J. 209, 212 (C.A.A.F. 1999) (referring to the *Barker* factors as informative). However, "Article 10 establishes a more rigorous speedy-trial standard than does the Sixth Amendment." *United States v. King*, 30 M.J. 59, 62 n.5 (C.M.A. 1990); *United States v. Smith*, 54 M.J. 783, 785 (A.F. Ct. Crim. App. 2001) ("Article 10 provides a more stringent speedy trial requirement than the Sixth Amendment."). Ultimately, the test under Article 10, UCMJ, is whether the Government acted "with reasonable diligence in getting the case to trial." *Smith*, 54 M.J. at 785 (citing *United States v. Kossman*, 38 M.J. 258, 262 (C.M.A. 1993)) (cleaned up).

In this case, Lt Col Hilton's speedy trial rights were violated because the Government cannot satisfy any *Barker* factor. This Court should grant review

because the length of delay in this case is particularly egregious, especially considering that Lt Col Hilton languished in pre-trial confinement for 181 days without charges levied against him.

A. Lt Col Hilton satisfies every *Barker* factor.

1. The length of delay was egregious.

The length of delay in this case weighs in favor of a speedy trial violation. It took the Government 273 days to arraign Lt Col Hilton (and 453 days to bring him to trial) after placing him in pretrial confinement. The trial judge agreed that this delay was so long that it weighed in favor of a violation. App. Ex. XVI at 12.

Worse still is the fact that Lt Col Hilton languished in confinement without charges for 181 days. But this Court has held that criminal defendants have a constitutional right to be charged with a crime within 48 hours of being detained. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991). The Government's failure to bring charges against Lt Col Hilton for 181 days surpasses the 48-hour rule by over 9,000 percent.

This Court should be concerned that military defendants are spending hundreds of days detained without charges, and military trial and appellate judges are doing nothing to stop the practice.

2. The Government has no justification for the delay, especially considering that it failed to act with reasonable diligence.

The trial judge found that the Government acted with diligence. But this conclusion is betrayed by both the facts of this case and binding precedent.

The delays in this case were caused by the Government's failure to carry out "canvas" interviews during the initial investigation. But that initial investigation was concluded before Lt Col Hilton was placed in confinement. Had the original investigation conducted those interviews, the delay would have been shorter.

The Government bears the burden of moving a case forward with reasonable diligence. *United States v. Mizgala*, 61 M.J. 122, 125 (C.A.A.F. 2005). Whether a case moves with reasonable diligence is a function of the complexities that the case presents. *United States v. Hatfield*, 44 M.J. 22, 23 (C.A.A.F. 1996). While a complex offense may constitute extraordinary circumstances warranting delay, this must be demonstrated in the record. *United States v. Perry*, 2 M.J. 113, 115 (C.M.A. 1977). Importantly, delays in case processing are not an invitation for the Government to "take a second bite at perfecting a case" especially when the information being utilized was previously available. *United States v. Cooley*, 75 M.J. 247, 253 (C.A.A.F. 2016).

The Government's delay to perfect its investigation of M.H.'s allegations through canvas interviewing, which should have been completed during the investigation with E.L., demonstrated a lack of reasonable diligence. While the Government was

entitled to investigate these offenses, the protections of Article 10 required forward movement. None of the newly discovered offenses were so complex to justify the delay. Rather, the new offenses only required investigation of eyewitnesses and canvas interviewing. Trial Tr. at 80-81.

For the offenses reported by M.H. on December 15, 2021, all eyewitness interviews had been accounted for by January 25, 2022. Trial Tr. at 60; 67. This left the canvas interviews. However, this step should have been completed months earlier during the investigation of E.L. Trial Tr. at 67-68. Owing to the redundant nature of canvas interviewing in a sexual assault investigation, had this step been completed with E.L. there would have been no additional delay.

The Government's failure to complete this step during the investigation of E.L. was negligent. This is evidenced by SA H.O.'s testimony in which she explained "it was missed" when she was asked why the canvas interviews were not completed. Trial Tr. at 117.

In *Cooley*, the CAAF found that the Government had unreasonably delayed proceedings to perfect its evidence, despite having had access to the information justifying the delay at an earlier point in time. 75 M.J. at 261. Similarly, the Government's failure to complete the investigative steps justifying the delay in the processing of M.H.'s allegations demonstrated a lack of reasonable diligence. Had the Government exercised due diligence in the earlier investigation, the investigation of M.H. could have been wrapped up as early as January 25, 2021.

Even without the canvas interviews, the Government possessed sufficient information to

charge Lt Col Hilton and move forward with the prosecution of M.H.'s allegations as early as January 25, 2022. On that date, the Government was in possession of M.H.'s victim interview and had exhausted their attempts to interview the only other eyewitnesses. The delays beyond this point were unreasonable. *Cooley*, 75 M.J. at 261 (finding impermissible delay after the point where the Government possessed information necessary to prosecute the offense). Although the Government may have preferred receiving the completed investigative report on M.H.'s allegations before proceeding to trial, this preference does not justify the delay. *See United States v. Reitz*, 22 C.M.A. 584, 585 (C.M.A. 1974) (holding that the Government's preference for completion of investigative report insufficient to warrant delay). The need for canvas interviewing extended to the other offenses later reported by J.R. and Lt Col Hilton's previous wives, creating unreasonable delay for those separate investigations as well.

Finally, the delay could not be justified based on the Government's preference to try all allegations in a single court-martial. *Cooley*, 75 M.J. at 261 (acknowledging that the preference for joinder does not warrant "endless delay" to run down investigative leads). The Government is not excused from the requirement for reasonable diligence when attempting to process additional charges. *United States v. Ward*, 23 C.M.A. 391, 394 (C.M.A. 1975) ("[T]he intercession of a new charge does not automatically authorize deferment of the trial of the original charges for which the accused has been confined.") Here, the Government committed to extended delays based on the discovery of new

offenses to investigate, despite Lt Col Hilton's status in pretrial confinement for other offenses that should have been fully investigated by January 25, 2022.

The delay in this case was not the result of a complex criminal investigation. Instead, it was caused by a lack of investigatory diligence. Therefore, this factor weighs in Lt Col Hilton's favor.

3. Lt Col Hilton asserted his rights to speedy trial.

Lt Col Hilton asserted his speedy trial rights. While the trial judge correctly found this fact, he reasoned that the factor did not weigh heavily in Lt Col Hilton's favor because Lt Col Hilton's defense counsel were not immediately available for a preliminary hearing nor available for trial until February 20, 2023. App. Ex. XVI at 14.

This conclusion makes little sense. It was the Government's choice to remove the originally docketed trial date. And any delay caused by defense counsel's availability was, as a result, not Lt Col Hilton's fault. It was the fault of the Government. Therefore, this factor should weigh heavily in Lt Col Hilton's favor.

4. Lt Col Hilton was prejudiced by the delay.

The military judge found that Lt Col Hilton suffered no prejudice from the delay. But this conclusion contravenes clear precedent from this Court. "The time spent in jail awaiting trial has a detrimental impact on the individual." *Barker*, 407 U.S. at 532; *see Rosales-Mireles v. United States*, 585 U.S. 129, 140 (2018) ("Any amount of actual jail time is significant, and has exceptionally severe

consequences for the incarcerated individual and for society." (cleaned up)).

As this court has recognized, any amount of pre-trial confinement is detrimental. Here, there were 181 days of confinement without charges, and 453 days before trial. The impact of this confinement was prejudicial to Lt Col Hilton.

B. Military defendants should not languish in pretrial confinement without charges merely because they serve in the military.

Military members shed many rights in the criminal justice process merely to serve their nation. Sometimes the limitations on those rights make sense and further the military mission. *See, e.g.*, *Parker v. Levy*, 417 U.S. 733, 744 (1974) (reasoning that servicemembers have reduced free speech rights because of the military's "specialized society"); *United States v. Anderson*, 83 M.J. 291, 293 (C.A.A.F. 2023), *cert. denied* 144 S. Ct. 1003 (2024), (holding that there is no constitutional right to a unanimous verdict in the military). But when a military defendant faces confinement for 181 days without charges, such a violation should not stand. Only this Court can rectify the military's failure to protect servicemembers rights to a speedy trial when military appellate courts fail to do so.

CONCLUSION

This Court can review decisions of the CAAF denying review of petitions for review. Here, the CAAF abused its discretion by failing to follow its statutory mandate to review all cases where good cause is shown. Because Lt Col Hilton showed good cause through the military judge's prejudicial error,

this Court can and should grant review and remand to the CAAF for further consideration.

Respectfully submitted,

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