

No. _____

IN THE
Supreme Court of the United States

PARKER C. MYSLOW,
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

In courts-martial, a military judge signs the Entry of Judgment (EOJ), marking the end of trial and the beginning of the post-trial process. Air Force regulations required that a judge advocate later sign a separate memorandum titled “First Indorsement.” That First Indorsement memorandum informs the National Instant Criminal Background Check System (NICS) that the servicemember had been deprived of his Second Amendment rights pursuant to 18 U.S.C. § 922, without any finding from the authoring judge advocate or any judicial officer that servicemember has been convicted of a crime of violence or the conduct otherwise falls within the Nation’s historical tradition of firearm regulation.

Article 66(d)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d)(2), specifically empowers military courts of criminal appeals to provide appropriate relief to correct errors in the processing of courts-martial made after the EOJ. However, the Air Force Court of Criminal Appeals (Air Force Court) and the Court of Appeals of the Armed Forces (CAAF) have decided that no military appellate court has the authority to correct an erroneous firearm prohibition included in the First Indorsement.

The question presented is:

Whether military courts of criminal appeals have authority under 10 U.S.C. § 866(d)(2) to correct an unconstitutional firearms ban annotated after entry of judgment.

PARTIES TO THE PROCEEDING

Petitioner is Second Lieutenant Parker C. Myslow.
Respondent is the United States.

CORPORATE DISCLOSURE STATEMENT

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

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

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INTRODUCTION

Petitioner is a United States Air Force service-member convicted at a court-martial. By Air Force regulation, the court-martial processing includes a memorandum called a First Indorsement. That memorandum informs the NICS that it is unlawful for Petitioner to receive any firearm that has been shipped or transported in interstate or foreign commerce pursuant to 18 U.S.C. § 922. The memorandum—effectively depriving Petitioner of his Second Amendment rights—does not document any finding that Petitioner has been convicted of a crime of violence or that his conduct otherwise falls within the Nation’s historical tradition of firearm regulation. Indeed, no such finding can be made in Petitioner’s case as he was convicted of violating a general regulation and wrongful use of a controlled substance—both stemming from Petitioner’s repeated use of tetrahydrocannabinol (THC), the chemical compound associated with marijuana. Under the UCMJ, the Air Force Court has explicit statutory authority to provide relief for this unlawful deprivation. But the CAAF has determined that correcting the violation is beyond its and the Air Force Court’s statutory authority, so the Air Force Court and the CAAF declined to provide any relief to Petitioner.

Final judgment in military courts-martial is complete when the military judge signs the EOJ. 10 U.S.C. § 860c; Rule for Courts-Martial (R.C.M.) 1111(a)(2). The Air Force required that a memorandum, called a “First Indorsement,” be attached to the EOJ. Pet.App. 27a. Part of the First Indorsement is the criminal indexing portion, which requires that a judge advocate document whether the conviction triggers firearm prohibitions and NICS registration

pursuant to 18 U.S.C. § 922. *Id.* Here, the Government indexed Petitioner for firearms prohibition under 18 U.S.C. § 922. The indexing was erroneous because it is inconsistent with the Nation’s history and tradition of firearms regulation. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 19 (2022).

Under 10 U.S.C. § 866(d)(2), the Air Force Court “may provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record.” Despite this clear statutory language, the CAAF has held that the Air Force Court lacks authority to provide relief for erroneous indexing like that at issue here. *United States v. Johnson*, 86 M.J. 8, 9 (C.A.A.F. 2025). The Air Force Court declined to grant Petitioner relief in this matter, citing *Johnson*.

The CAAF’s holding in *Johnson* states that the First Indorsement is not a separate document but is part of the EOJ itself. Therefore, the Air Force Court cannot correct it pursuant to its Article 66 authority to provide relief for errors that occur after the judgment was entered into the record. *Johnson*, 86 M.J. at 13–14. The holding is inconsistent with the text and scheme of the UCMJ and the R.C.M.s. The Air Force’s regulations regarding the First Indorsement renders the firearm prohibition an error that occurs *after* the EOJ for which the Air Force Court can provide appropriate relief. Therefore, this Court should grant review to overrule the CAAF’s determination to the contrary.

PETITION FOR A WRIT OF CERTIORARI

Second Lieutenant Parker T. Myslow, United States Air Force, respectfully petitions for a writ of certiorari to review the decision of the CAAF.

DECISIONS BELOW

The opinion of the Air Force Court is not reported. It is available at 2025 CCA LEXIS 473 and reproduced at pages 2a–15a. The CAAF Order denying the petition for grant of review is not yet reported. It is available at 2026 CAAF LEXIS 21 and reproduced at page 1a.

JURISDICTION

The Air Force Court had jurisdiction over this matter pursuant to Article 66, UCMJ, 10 U.S.C. § 866. The CAAF had jurisdiction pursuant to Article 67, UCMJ, 10 U.S.C. § 867. The CAAF denied a petition for grant of review on January 6, 2026. The Court has jurisdiction over Petitioner’s case under 28 U.S.C. § 1259(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II.

In relevant part, 18 U.S.C. § 922(g)(1) states that it is unlawful for any person “who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

In relevant part, 28 C.F.R. § 25.6(c) provides:

The FBI NICS Operations Center, upon receiving an [Federal Firearm Licensee (FFL)] telephone or electronic dial-up request for a

background check, will . . . Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check: . . . “Denied” response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides information demonstrating that receipt of a firearm by the prospective transferee would violate 18 U.S.C. 922 or state law.

10 U.S.C. § 860c(a), *Entry of judgment*, provides:

(1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:

(A) The Statement of Trial Results under section 860 of this title (article 60).

(B) Any modifications of, or supplements to, the Statement of Trial Results by reason of—

(i) any post-trial action by the convening authority; or

(ii) any ruling, order, or other determination of the military judge that affects a plea, a finding, or the sentence.

10 U.S.C. § 866(d)(2), *Courts of Criminal Appeals*, provides: “In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c).”

In relevant part, R.C.M. 1111, *Entry of judgment*, provides:

(a) In general.

(1) *Scope.* Under regulations prescribed by the Secretary concerned, the military judge of a general or special court-martial shall enter into the record of trial the judgment of the court. . . .

(2) *Purpose.* The judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders. The entry of judgment terminates the trial proceedings and initiates the appellate process.

. . . .

(b) *Contents.* The judgment of the court shall be signed and dated by the military judge and shall consist of—

. . . .

(3) *Additional information.*

. . . .

(F) *Other information.* Any additional information that the Secretary concerned may require by regulation.

Pertinent text of the following authorities is reproduced in the Appendix: Department of the Air Force Manual (DAFMAN) 71-102, *Air Force Criminal Indexing* (Jul. 21, 2020), Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* (Jan. 24, 2024).

STATEMENT OF THE CASE

Following this Court's decision in *Bruen*, 597 U.S. 1, many servicemembers challenged the constitutionality of the firearms prohibitions indicated on the First Indorsements to their EOJs. The CAAF held in *Johnson* that it and the Air Force Court do not have the authority to correct an erroneous indexing indication documented in the First Indorsement. 86 M.J. at 13–14. As a result, numerous Air Force defendants who were erroneously and unconstitutionally deprived of their second Amendment right to bear arms were denied the ability to obtain relief from such an error from the Air Force Court. Petitioner is one of those defendants.¹

A military judge sitting as a general court-martial convicted Petitioner Parker T. Myslow, a Second Lieutenant in the Air Force, pursuant to his pleas, of violating a general regulation in violation of Article 92, UCMJ, 10 U.S.C. § 892, and wrongful use of a controlled substance in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The court of first instance exercised federal jurisdiction pursuant to Article 2(a)(1), UCMJ, 10 U.S.C. § 802(a)(1). Petitioner admitted to repeatedly using delta-8 and delta-9 THC. THC is the

¹ The question presented has been raised in petitions for writ of certiorari that were denied by this Court, *United States v. Schneider*, No. 24-0228/AF, 2025 CAAF LEXIS 605 (C.A.A.F. July 22, 2025), *cert. denied*, __ S. Ct. __, 223 L. Ed. 2d 519 (2026) (consolidating thirteen cases for review); *United States v. Dominguez-Garcia*, No. 24-0183/AF, 2025 CAAF LEXIS 586 (C.A.A.F. July 22, 2025), *cert. denied*, __ S. Ct. __, No. 25-730 (2026) (consolidating three cases for review), and by an additional petition currently pending before the Court, *United States v. Zhong*, No. 25-0011/AF, 2025 CAAF LEXIS 626 (C.A.A.F. July 25, 2025), *petition for cert. filed*, No. 25-742 (U.S. Dec. 19, 2025).

naturally occurring chemical compound found in the cannabis plant that has the mind-altering properties associated with marijuana. *Med. Marijuana, Inc. v. Horn*, 604 U.S. 593, 597 (2025). THC-8 use is proscribed in the Air Force by a general regulation, and THC-9 use is proscribed by Article 112a UCMJ. The military judge sentenced the Petitioner to a dismissal. Pet.App. 20a–21a.

The First Indorsement to Petitioner’s EOJ stated that he is subject to a “Firearm Prohibition Triggered Under 18 U.S.C. § 922.” *Id.* at 22a. The Petitioner appealed to the Air Force Court, raising three issues including the unconstitutional firearms prohibition. The Air Force Court affirmed the findings and sentence, providing neither discussion nor relief regarding the firearms prohibition, citing the CAAF’s *Johnson* decision. Petitioner sought a grant of review from the CAAF for the same three issues, and the CAAF denied the petition.

REASONS FOR GRANTING THE PETITION

The First Indorsement indexed Petitioner in NICS, barring him from possessing firearms. This was error because it violates the Second Amendment.

Because there was an error in the First Indorsement—which occurred after the EOJ by the military judge—the Air Force Court had authority under 10 U.S.C. § 866(d)(2) to provide relief for that error. Despite this plain text interpretation, the CAAF has held that the Air Force Court does not have that authority, and in so ruling misinterpreted not only 10 U.S.C. § 866(d)(2) but also 10 U.S.C. § 860c. The CAAF’s decision is antithetical to the plain text of the UCMJ and results in the unreviewable deprivation of service-members’ Second Amendment rights.

This Court should grant review to clarify the meaning of 10 U.S.C. § 866(d)(2) and restore the Air Force Court's ability to correct constitutional errors such as those at issue here.

I. Article 66(d)(2), UCMJ authorizes the Air Force Court to grant relief to Petitioner for this error, but the CAAF proscribed this appellate function in contrast with the plain text and the context of the controlling statutes, rules, and regulations.

A. The CAAF's holding is contrary to the plain text of the controlling statutes, rules, and regulations.

“[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.” *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (citations omitted) (internal quotations marks omitted).

Here, the statute is clear. Article 66(d)(2), UCMJ, provides the Air Force Court with the authority to “provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record under section 860c.” 10 U.S.C. § 866(d)(2). “Section 860c” refers to Article 60c, UCMJ, which provides that “the military judge shall enter into the record of trial the judgment of the court.” 10 U.S.C. § 860c(a)(1). The text of Articles 60c and 66(d)(2), UCMJ, is unambiguous: after the military judge signs the EOJ under Article 60c, any post-trial error thereafter would fall into the Air Force Court's “error-correction” jurisdiction under Article 66(d)(2).

Pursuant to the R.C.M. and Air Force regulations, the First Indorsement is completed *after* the military judge signs the EOJ. The President, pursuant to Article 60c(a), UCMJ, prescribes rules for the preparation and distribution of the EOJ. The President has directed that “the EOJ ‘*shall consist of*’—among other things—‘[a]ny additional information that the Secretary concerned may require by regulation.’” *Johnson*, 86 M.J. at 13 (citing R.C.M. 1111(b)(3)(F)) (alteration in original).

Pursuant to R.C.M. 1111(b)(3)(F), the Secretary of the Air Force outlines the “additional information” to the EOJ through Department of the Air Force Instruction (DAFI) 51-201. *See, e.g.*, Pet.App. 26a–29a (outlining the processing requirements). Under the applicable version of DAFI 51-201, “[t]he EOJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to *terminate* trial proceedings and initiate appellate proceedings.” *Id.* at 26a. This comports with the inherent understanding of the finality of the EOJ itself. The military judge’s signature “denotes some kind of terminal event.” *Riley v. Bondi*, 606 U.S. 259, 290–91 (2025) (quoting *Smith v. Berryhill*, 587 U.S. 471, 479 (2019)) (reviewing the statutory definition of “final” for final judicial orders in 8 U.S.C. § 1252(b)(1)).

Under the Air Force regulation, the “[m]inimum contents” of the EOJ “must include the contents listed in R.C.M. 1111(b), and the [Statement of Trial Results] must be included as an attachment.” Pet.App. 26a. Notably, the “additional information that the Secretary concerned may require by regulation” does not include the First Indorsement. *Id.* Accordingly, neither the UCMJ, the R.C.M., nor the Air Force

regulations state that the First Indorsement is part of the EOJ.

Instead, the First Indorsement is a separate document that—among other notifications—triggers NICS registration, and it is completed and attached to the record *after* the military judge signs the EOJ. *See id.* at 17a (showing that “after the EOJ is signed by the military judge,” the First Indorsement is signed and attached).² Moreover, another judge advocate—not the military judge—signs the First Indorsement. *Id.* Again, this comports with the distinct roles of each document. The First Indorsement serves as a notification to law enforcement that occurs “after all post-trial actions, rulings, or orders.” *Id.* at 16a. It is not part of the judgment of the court entered into the record by the military judge. *See United States v. Williams*, 85 M.J. 121, 126 (C.A.A.F. 2024) (holding that criminal indexing is not part of the “findings” or “sentence” entered into the record under Article 60c, UCMJ).

Consistent with these regulations, the EOJ and the First Indorsement themselves confirm that they are separate documents, with the EOJ occurring first and the First Indorsement occurring after. The EOJ states directly above the military judge’s signature: “[t]his judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders, if any, and is hereby entered into the record on

² On February 4, 2026, the Air Force issued a new guidance memorandum that “removes the First Indorsement from courts-martial documents.” This does not undercut the reasons for granting the Petition. Petitioner and other Airmen remain deprived of their Second Amendment rights, and—but for the CAAF’s holding in *Johnson*—could obtain relief from the Air Force Court. Moreover, the guidance memorandum becomes void after one year or upon a change or rewrite of the operative regulation.

(date).” *Id.* at 21a, 48a. The First Indorsement states: “The following criminal indexing is required, *following* Entry of Judgment.” *Id.* at 22a, 49a. The First Indorsement *follows* the EOJ and only indicates indexing requirements, it is not the judgment being entered into the record under Article 60c, UCMJ.

Because any error in the First Indorsement occurred “in the processing of the court-martial after the” EOJ, Article 66(d)(2), UCMJ, authorizes the Air Force Court to “provide appropriate relief” for such error. In the face of the plain text of the statutes, rules, and regulations, the CAAF held that the Air Force Court cannot review the First Indorsement. The CAAF instead concluded that the First Indorsement is part of the EOJ, and therefore outside of the purview of the Air Force Court’s 10 U.S.C. 866(d)(2) authority. *Johnson*, 86 M.J. at 13–14.

The plain text of the statute and associated rules and regulations confirm the opposite of CAAF’s holding: the EOJ and the First Indorsement cannot be the same. The text of neither the UCMJ, R.C.M., nor the Air Force regulation states that the First Indorsement is part of the EOJ. The only one that discusses the First Indorsement—the Air Force regulation—states that the First Indorsement follows the EOJ and requires that a staff judge advocate sign the document, in stark contrast to Article 60c, UCMJ, which requires that the military judge sign the EOJ. *Contrast* Pet.App. 27a, *with* 10 U.S.C. § 860c.

The CAAF appears to have reached this erroneous reading by confusing the Air Force requirement that the First Indorsement be entered into the record of trial with the Article 60c, UCMJ, requirement that the military judge enter into the record the judgment

of the court. To support its conclusion, the CAAF said any other interpretation would be impermissible because the operative rules and regulations do not establish “what authority—if any—would authorize [a judge advocate] to supplement the record of trial with an additional document after the entry of the EOJ into the record.” *Johnson*, 86 M.J. at 13. This reasoning correctly identifies that the First Indorsement required by Air Force regulations (authored by the Secretary of the Air Force) is not authorized under the UCMJ (authored by Congress) or the R.C.M. (authored by the President). However, the appropriate remedy is to strike the Air Force regulation as unlawful, not to alter the UCMJ and R.C.M. to conform to Air Force regulations.

Moreover, the simple consequence that the documents are attached to each other does not mean that they are legally interchangeable, serve the same purpose, or justify deviation from the uniform application of military justice. The text of the statutes, rules, and regulations make clear that the CAAF was wrong; the First Indorsement and EOJ are distinct documents.

B. The CAAF’s holding conflicts with the overall scheme of the controlling statutes, rules, and regulations.

Words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989). In the context of the UCMJ, the R.C.M.s, and Air Force regulations, the EOJ and the First Indorsement must be separate and sequential documents. The EOJ—signed by the military judge—documents the end of the court-martial. The First Indorsement—signed by another judge advocate at some

uncertain date—is part of post-trial processing. The CAAF holding in *Johnson* runs contrary to this intuitive statutory scheme. Indeed, the concurring opinion in *Johnson* identifies three distinct conflicts between the traditional applications of the rules and regulations governing courts-martial and the controlling opinion.

First, under the CAAF’s holding, another judge advocate—not the military judge—completes the EOJ. This flies in the face of Article 60c and RCM 1111(e)(2). Under Article 60c, the military judge shall enter into the record of trial the judgment of the court. Article 60c was modeled after Federal Rule of Criminal Procedure 32(k)(1). *Johnson*, 86 M.J. at 14 n.1 (Johnson, J., concurring in part and in the judgment). That Rule likewise provides that “The judge must sign the judgment.” Fed. R. Crim. P. 32(k)(1). Moreover, R.C.M. 1111(b) requires that the judgment of the court be “signed and dated by the military judge.” This is consistent with the basic premise that the EOJ belongs to the *judge*, not to be altered or supplemented by another attorney. However, under CAAF’s erroneous holding, someone other than the military judge technically completes the EOJ by signing the First Indorsement.

Second, concluding that someone other than the military judge completes the EOJ also affects *when* the court-martial is complete. Again, the concurring opinion identified the dangerous consequences of the majority’s flawed logic. Citing multiple statutory and R.C.M. provisions, the concurrence highlighted how EOJ affects numerous actions in the military justice system. *Johnson*, 86 M.J. at 14–15 (Johnson, J., concurring in part and in the judgment). If this “date-certain” event can be manipulated by a judge advocate

after the military judge signs a document, then that would affect these other actions. Among those consequences is the very result at issue here: if the Air Force errs in the First Indorsement—a document completed *after* the military judge signs the EOJ—the military judge inherently cannot review it, despite the judge’s authority to oversee the trial. But, because the CAAF treats the First Indorsement as *simultaneous* with the EOJ, the Air Force Court is barred from reviewing it as part of the Air Force Court’s authority to oversee the post-trial processing. As a result, no military judicial authority reviews the First Indorsement included in Air Force records of trial for any errors in that memorandum—including the unconstitutional deprivation of Petitioner’s Second Amendment rights resulting directly from the court-martial.

Third, the CAAF’s holding leaves a single military service waiting for action, discussion, or change by a judge advocate *after* a military judge has already entered judgment into the record. Other services denote 18 U.S.C. 922 indexing *prior* to the entry of judgment through their operative regulations, making it reviewable by the military judge, if not the military appellate courts. *See Williams*, 85 M.J. at 922. However, under the operative regulations, the Air Force alone directed the indexing be accomplished through a document completed after the EOJ. Because of the CAAF’s holding that the Air Force’s First Indorsement was part of the EOJ, the CAAF changed the timing of the EOJ for only one service, even though the same Article 60c of the UCMJ governs all the services. This too is inconsistent with the overall statutory scheme of the *Uniform Code of Military Justice*. This “fractur[es] the very uniformity the [UCMJ] sought to create.”

Johnson, 86 M.J. at 15 (Johnson, J., concurring in part and in the judgment).

The text of the statutes, rules, and regulations states that (1) the Air Force Court can provide relief for errors that occur in post-trial processing *after* the EOJ, and (2) the First Indorsement occurs after the EOJ. The CAAF nevertheless held that the EOJ *includes* the First Indorsement and therefore falls outside of the Air Force Court's purview.

The opinion conflicts not only with the text of the UCMJ, R.C.M., and Air Force regulations, but also with the context. The conflict between the CAAF opinion and the underlying statutory scheme is evidenced by the bizarre consequences of the holding. First, the military judge no longer has the final word on the EOJ. Second, the deprivation of constitutional rights effected by the court-martial is no longer reviewable by military courts. Third, the Uniform Code of Military Justice is no longer uniformly applied across the services. Overturning this erroneous decision would correct these results, restore the Air Force Court's appellate authority, and permit the Air Force Court to review the First Indorsement for constitutional errors as authorized under 10 U.S.C. § 866(d)(2).

II. Petitioner was improperly indexed under 18 U.S.C. § 922. This violated his Second Amendment rights.

This Court has articulated the standard for analyzing Second Amendment regulations:

When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the

Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

Bruen, 597 U.S. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 336 U.S. 36, 49 n.10 (1961)).

Here, the Government has deprived the Petitioner of his Second Amendment rights through the First Indorsement by identifying that he is prohibited from possessing firearms under 18 U.S.C. § 922³ and reporting the prohibition to NICS. *See Zherka v. Bondi*, 140 F.4th 68, 76 (2d Cir. 2025) (“Section 922[] clearly covers conduct that the Second Amendment presumptively protects.”). Therefore, the Government should justify the lifetime ban for Petitioner by demonstrating that it “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24.

The Government has not done so. Through *Johnson*, the CAAF has preempted the Air Force Court from requiring that the Government meet this burden. The CAAF held instead that the First Indorsement—including its underlying firearms prohibition—is unreviewable by military courts. *Johnson*, 86 M.J. at 13–14. This alone is a Second Amendment violation. The First Indorsement proscribes Petitioner’s

³ In Petitioner’s case, the Government did not identify a specific subsection of 18 U.S.C. § 922(g). Pet.App. 22a. Presumably, the government intended to restrict Petitioner’s right to firearms pursuant to 18 U.S.C. § 922(g)(1), the subsection that bars possession of firearms for those convicted “in any court, of a crime punishable by imprisonment for a term exceeding one year,” and which has been most comprehensively analyzed by federal courts.

right to bear arms without the Government justifying the prohibition as applied to Petitioner.

Moreover, disarming Petitioner—who has not been convicted of a crime of violence and who has not been the subject of a finding that he represents a credible threat to physical safety—is indeed inconsistent with the Nation’s historical tradition of firearm regulation. Firearm restrictions have not historically been so broadly applied. Instead, “actual ‘longstanding’ precedent in America and pre-Founding England suggests that a firearms disability can be consistent with the Second Amendment only to the extent that . . . its basis credibly indicates a present danger that one will misuse arms against others and the disability redresses that danger.” C. Kevin Marshall, *Why Can’t Martha Stewart Have a Gun*, 32 Harv. J.L. & Pub. Pol’y 695, 698 (2009).

Prior to 1961, when Congress enacted the operative provision of Section 922, “the original [Federal Firearms Act] had a narrower basis for a disability, limited to those convicted of a ‘crime of violence.’” *Id.* at 699. Earlier, the Uniform Firearms Act of 1926 stated that “a person convicted of a ‘crime of violence’ could not ‘own or have in his possession or under his control, a pistol or revolver.’” *Id.* at 701, 704 (quoting 1926 Uniform Firearms Act §§ 1, 4). A “crime of violence” meant “committing or attempting to commit ‘murder, manslaughter, rape, mayhem, assault to do great bodily harm, robbery, [larceny], burglary, and housebreaking.’” *Id.* (quoting 1926 Uniform Firearms Act § 1).

Section 922 is overbroad and is unconstitutional as applied to Petitioner. In essence, Petitioner pleaded guilty in a court-martial because he used THC

recreationally. Not only is this not a crime of violence, it is not even a crime in the majority of U.S. jurisdictions. *See* United States Sentencing Commission, Weighing the Impact of Simple Possession⁴ of Marijuana, at 5, 29–31 (Jan. 10, 2023), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2023/20230509_Marijuana-Possession.pdf (summarizing state laws).⁵ Regardless of Petitioner’s departure from military standards, recreational drug use is a far cry from the crimes of violence that have historically warranted a firearms deprivation. Banning Petitioner from possessing firearms because of such use violates the Second Amendment. Indeed, the U.S. Court of Appeals for the Fifth Circuit held that 18 U.S.C. § 922 was unconstitutional as applied to an admitted habitual marijuana user, reasoning that the prohibition was “inconsistent with our ‘history and tradition’ of gun regulation.” *United States v. Daniels*, 124 F.4th 967, 979 (5th Cir. 2025) *petition for cert. filed*, No. 24-1248 (U.S. June 5, 2025).

In reviewing the categorical ban of firearms for all felons pursuant to 18 U.S.C. § 922(g)(1), the U.S.

⁴ Petitioner was convicted of drug *use* and violation of a general regulation due to drug *use*, but drug *possession* provides the closest civilian analog.

⁵ *See also* Proclamation No. 10467, 87 Fed. Reg. 61441 8 (Oct. 6, 2022) (A Proclamation Granting Pardon for the Offense of Simple Possession of Marijuana); Increasing Medical Marijuana and Cannabidiol Research, Executive Order (Dec. 18, 2025) available at <https://www.whitehouse.gov/presidential-actions/2025/12/increasing-medical-marijuana-and-cannabidiol-research/> (directing the Attorney General to “take all necessary steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the [Controlled Substances Act] . . . in accordance with Federal law.”).

Courts of Appeals for the Third and Sixth Circuits have reached similar conclusions. Applying *Bruen*, those courts held that a categorical ban of firearms for all felons violated the Second Amendment. The Third and Sixth Circuit instead required an evaluation of the specific facts regarding each individual who was barred from firearm possession to determine if the prohibition was constitutional as applied.⁶ In *Range v. United States*, the Third Circuit held that the firearms ban was unconstitutional as applied to a felon with a conviction for making a false statement to obtain food stamps, reasoning there was no historical analogue for disarming the nonviolent offender. 124 F.4th 218, 229–32 (3d Cir. 2024). In *United States v. Williams*, the Sixth Circuit held that the firearms ban was constitutional *only as applied to that particular appellant*, reasoning that 18 U.S.C. § 922 “is constitutional as it applies to dangerous individuals. Because Williams’s criminal record shows that he’s dangerous, his as-applied challenge fails.” 113 F.4th 637, 662 (6th

⁶ In conflict with the above opinions, the U.S. Courts of Appeals for the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh circuits all held that the broad prohibition against felons possessing firearms was constitutional, generally reasoning either that the prohibition itself fell within the Nation’s tradition or because felons inherently were sufficiently dangerous. *Zherka*, 140 F.4th at 77–96; *United States v. Hunt*, 123 F.4th 697, 707 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1125 (8th Cir. 2024); *United States v. Duarte*, 137 F.4th 743, 755–62 (9th Cir. 2025); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025); *United States v. Dubois*, 139 F.4th 887, 894 (11th Cir. 2025). The CAAF decision in *Johnson* did not create this circuit split, and the immediate issue here is whether the Air Force Court can review the operative document for a constitutional violation, not whether a constitutional violation occurred. Still, the conflicting circuit court opinions regarding the underlying issue further exemplify the merit in granting this Petition.

Cir. 2024); *see also United States v. Diaz*, 458, 471 (5th Cir. 2024) (also holding 18 U.S.C. § 922(g)(1) was constitutional as applied to the particular appellant, reasoning that “laws authorizing severe punishments for thievery and permanent disarmament in other cases supported the application of Section 922(g)(1)” to Mr. Diaz—who had multiple convictions for motor vehicle theft and related offenses).

These decisions were also in accordance with this Court’s holding in *United States v. Rahimi*, 602 U.S. 680 (2024). In *Rahimi*, the Court concluded that the historical analysis supported the proposition that only when “an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.” 602 U.S. at 698.

Petitioner—who has not committed a violent offense and does not pose a clear threat of physical violence to another—has been unlawfully deprived of his Second Amendment rights through the First Indorsement declaring that he is prohibited from possessing firearms under 18 U.S.C. § 922.

Moreover, the harm to Petitioner is ripe for correction now. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (outlining the requirements for standing: injury, causation, redressability). Due to the First Indorsement, Petitioner is currently unable to lawfully purchase firearms. As the Air Force regulations state: “Reporting of persons qualifying for NICS prohibition is an immediate denial of the individual’s right to exercise his or her constitutional right to possess a firearm.” Pet.App. 40a–41a. Indeed, Air Force regulations require that—once signed by the staff judge advocate—the First Indorsement is submitted

to NICS through the applicable Air Force law enforcement agencies. *Id.*

As a result, if and when Petitioner attempts to purchase a firearm, the prospective seller would identify—upon performing the NICS background check required under 18 U.S.C. §§ 922(s), (t)(1)(A)—that the Petitioner is barred from receiving a firearm. 28 C.F.R. § 25.6(c)(1)(iv)(C); *see also Babbitt v. UFW Nat’l Union*, 442 U.S. 289, 298 (1979) (noting that a plaintiff “should not be required to await and undergo a criminal prosecution as the sole means of seeking relief”). But for CAAF’s erroneous ruling in *Johnson*—the Air Force Court could grant relief for this error through its Article 66(b) review. Relief through correction of the First Indorsement would resolve the firearm prohibition because the Air Force transmits to NICS “[a]ny actions taken . . . as the result of appellate review.” Pet.App. 41a

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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