

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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MICHAEL J. HYMEL,  
*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 was charged with being derelict in the performance of his military duties, a violation of 10 U.S.C. § 892. The charge alleged Petitioner engaged in “unprofessional relationships,” which a regulation ostensibly proscribed. Pet. 3a. Petitioner ultimately pled guilty to this charge.

Under military law, a defendant who pleads guilty must set out the underlying factual basis for the offense through a colloquy with the trial judge, often referred to as the providence or *Care*<sup>1</sup> inquiry.

Despite this requirement, during the providence inquiry, the trial judge only elicited that Petitioner drank alcohol, danced in the presence of his subordinates, and later fell asleep in the presence of his subordinates, acts not prohibited by the applicable regulation. The Air Force Court of Criminal Appeals affirmed this conviction applying a standard of review in the “light most favorable to the Government,” Pet. 12a, even though that standard is grounded only in a concurrence and is inconsistent with the standard used by the United States Court of Appeals for the Armed Forces to assess guilty pleas.

The question presented is:

Did the Court of Appeals for the Armed Forces abuse its discretion under 10 U.S.C. § 867(a)(3) by failing to grant review “upon petition of the accused and on good cause shown,” where Petitioner made an un rebutted showing of good cause?

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<sup>1</sup> *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969)

**PARTIES TO THE PROCEEDING**

Petitioner is Captain (Capt) Michael J. Hymel, United States Air Force. Respondent is the United States.

**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

Petitioner was serving in the United States Air Force when he pled guilty and was convicted by a court-martial. On appeal, Petitioner raised—among other issues—whether his guilty plea to dereliction of duty was provident. The United States Air Force Court of Criminal Appeals (AFCCA) ruled against the claim. Pet. 19a. Petitioner then petitioned the Court of Appeals for the Armed Forces (CAAF) to review the guilty plea and lower court’s standard of review in affirming it. The CAAF declined to grant review. Pet. 1a.

Since December 22, 2024, this Court has had jurisdiction to review cases in which the CAAF refused to grant review. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 533, 137 Stat. 136, 261 (2023) (codified at 28 U.S.C. § 1259, effective one year from date of enactment).

## PETITION FOR A WRIT OF CERTIORARI

Capt Michael J. Hymel respectfully petitions for a writ of certiorari to review the decision of the CAAF denying review of the AFCCA’s decision in his case.

## OPINIONS BELOW

The AFCCA’s decision is unreported. It is available at 2025 CCA LEXIS 432, and is reproduced at Pet. 2a-20a. The CAAF’s decision is pending publication, is available at 2025 CAAF LEXIS 1028, and reproduced at Pet. 1a.

## JURISDICTION

The CAAF declined to grant review of whether Petitioner’s guilty plea was provident. The CAAF’s

denial order was issued on December 16, 2025. This Court's jurisdiction rests on 28 U.S.C. § 1259(3).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Article 45(a), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 845(a), in pertinent part, provides

If an accused . . . after a plea of guilty sets up a matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently . . . a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

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.”

Section 1259 of Title 28 of the U.S. Code provides, in pertinent part, that “[d]ecisions of the [CAAF] may be reviewed by the Supreme Court by writ of certiorari in . . . [c]ases in which the [CAAF] granted or refused to grant a petition for review under section 867(a)(3) of title 10.”

Article 92, UCMJ, 10 U.S.C. § 892, in pertinent part, provides “Any person subject to this chapter who . . . is derelict in the performance of his duties . . . shall be punished as a court-martial may direct.”

### **STATEMENT OF THE CASE**

Petitioner, Michael J. Hymel, was a captain (O-3) in the United States Air Force at the time of his court-martial. He was convicted, in accordance with his

plea, of being derelict in the performance of his duties in violation of Article 92, UCMJ, 10 U.S.C. § 892.

“The military . . . has a detailed procedure that must be followed before a military judge can accept a guilty plea, ensuring that an innocent person does not plead guilty.” *United States v. Nelson*, 51 M.J. 399, 400 (CAAF 1999). “To ensure that there is a factual basis for the plea, the accused must answer questions under oath in the presence of counsel that satisfy the judge that the plea is provident.” *Id.*

During the providence inquiry for the guilty plea, the trial judge explained the elements of the offense as follows:

- (1) That [Petitioner] had a certain duty, that is: refraining from engaging in inappropriate and unprofessional conduct with Airman First Class [(A1C) AB<sup>1</sup>] that detracted from the superior-to subordinate authority, in violation of Air Force Instruction (AFI) 1-1, Air Force Standards;
- (2) That [Petitioner] knew of that duty; and
- (3) That on or about 6 July 2019, [Petitioner was] willfully derelict in the performance of that duty by willfully failing to refrain from engaging in inappropriate and unprofessional conduct with Airman First Class [AB] that detracted from the superior-to-subordinate authority, in violation of Air Force Instruction 1-1, Air Force Standards.

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<sup>1</sup> Initials are being substituted for the individual’s name.

The trial judge explained the source of the duty described in element one as being “captured” in AFI 1-1. Specifically, the trial judge pointed to paragraph 2.2.2., which states:

With respect to relationships between superiors and subordinates, whether they are other military members or civilian employees, there is a balance that recognizes the appropriateness of a relationship. Social interaction that contributes appropriately to unit cohesiveness and effectiveness is encouraged. Relationships are unprofessional when they detract from the supervisor-to-subordinate authority or reasonably create the appearance of favoritism, misuse of office or position, or the abandonment of organizational goals for personal interests. This is true whether pursued and conducted on or off duty.

During the trial, the Government counsel entered a Stipulation of Fact into evidence. Among other things, it stated the following:

Capt Hymel socialized with Airmen<sup>2</sup> in the unit and engaged [in] conversations of a personal nature that were inappropriate between a commissioned officer and enlisted servicemembers.

Capt Hymel was overly familiar with A1C [AB], discussing topics topics [sic] of a nature and in a manner that suggested they were on terms of military equality. This undermined his

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<sup>2</sup> The term “Airmen” refers to uniformed members of the United States Air Force.

superior-to-subordinate authority both in his dealings with A1C [AB] and others.

Capt Hymel participated in a group conversation that included discussion of a sexual intercourse, past sexual experiences, and A1C [AB]'s viewing of her boyfriend's penis.

Capt Hymel danced in very close proximity and in a provocative manner inappropriate between a commissioned officer and an enlisted servicemember.

Capt Hymel was so inebriated that he fell asleep in a chair and remained there until the morning.

Petitioner then walked back these facts, denying their occurrence. The trial judge re-opened the plea colloquy and sought to resolve the discrepancy, consistent with his duty to do so or, alternatively, reject the guilty plea. Pet. 11a; 10 U.S.C. § 845(a). In doing so, the trial judge narrowed the facts to which Petitioner agreed and which supported the guilty plea to "excessive drinking passing out on a chair in front of subordinates," and "dancing on a tight dance floor with subordinates[.]" Petitioner then agreed that the conduct was inappropriate.

The AFCCA utilized a "light most favorable to the Government" standard and found Petitioner's plea provident. Pet. 7a, 10a.

Petitioner sought review of the AFCCA's decision by the CAAF, asserting "good cause shown" based on the AFCCA's decision affirming the factual basis for the guilty plea and employing a legal standard that conflicted with controlling law to do so. Supp. to the

Pet. for Grant of Review at 17-25; Pet. 1a. The CAAF denied review. Pet. 1a.

### REASONS FOR GRANTING THE PETITION

This Court should grant review because, although Petitioner made a showing of “good cause,” the CAAF failed to review his case.

**I. Good cause existed in the case because the AFCCA decided a question of law in a way that conflicted with the CAAF’s precedent when it affirmed Petitioner’s guilty plea and did so viewing the evidence in the light most favorable to the Government.**

Before accepting a guilty plea, a military trial judge must ensure that there is a factual basis for the accused’s plea. *Care*, 40 C.M.R. at 253. A sufficient factual basis for a plea, in turn, requires *a sufficient factual basis for each element* of the offense for which the accused is pleading. *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004). Additionally, “a military judge must elicit *actual facts* from an accused and not merely legal conclusions.” *United States v. Moratalla*, 82 M.J. 1, 3 (C.A.A.F. 2021) (quoting *United States v. Price*, 76 M.J. 136, 138 (C.A.A.F. 2017)); see *United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996) (“Mere conclusions of law recited by an accused are insufficient to provide a factual basis for a guilty plea.”). “A providence inquiry into a guilty plea must establish, *inter alia*, ‘not only that the accused himself believes he is guilty but also that the factual circumstances as revealed by the accused himself objectively support that plea.’” *United States v. Higgins*, 40 M.J. 67, 68 (C.A.A.F. 1994) (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)).

A trial judge's failure to obtain an adequate factual basis for a guilty plea constitutes an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). However, trial judges are afforded significant deference on this point and are granted substantial leeway in conducting providence inquiries. *Moratalla*, 82 M.J. at 4. In determining whether a trial judge abused his or her discretion, a court applies the "substantial basis" test. *Inabinette*, 66 M.J. at 322. Specifically, the court asks "whether there is something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the appellant's guilty plea." *Id.*

The elements applicable to the offense of dereliction in the performance of duties are:

- (a) That the accused had certain duties;
- (b) That the accused knew or reasonably should have known of the duties; and
- (c) That the accused was willfully derelict in the performance of those duties.

*Manual for Courts-Martial, United States* (2019 ed.) (MCM), pt. IV, ¶ 18(b)(3).

**A. The military judge failed to elicit a factual basis that Petitioner's drinking and dancing was inappropriate and unprofessional conduct with A1C AB that detracted from the superior-to-subordinate relationship.**

In the instant case, the relevant duty was "refraining from engaging in inappropriate and unprofessional conduct with Airman First Class [AB] that detracted from the superior-to-subordinate

authority, in violation of Air Force Instruction 1-1, Air Force Standards.”

But after inconsistencies led the trial judge to re-open the colloquy on the factual basis supporting the guilty plea and, after narrowing the factual bases for the offense, the trial judge failed to elicit any facts to establish what exactly it was that made the drinking and dancing “inappropriate and unprofessional conduct with” A1C AB. There is nothing *inherently* inappropriate or unprofessional about drinking and dancing in the presence of subordinates; otherwise, many social functions amongst officer and enlisted military members, whether on duty or off, would inherently be violations of military law.

Drinking to the point of intoxication in the presence of enlisted subordinates by itself is not inappropriate or unprofessional. More facts would be needed to establish the inappropriate or unprofessional nature of the drinking.

Not only did the trial judge fail to elicit how—beyond mere conclusions—drinking and dancing were “inappropriate and unprofessional,” he never elicited how the alleged inappropriate and unprofessional drinking and dancing “detracted from the superior-to-subordinate authority.”

Lastly, the military judge failed to elicit any facts to explain how Petitioner’s alleged inappropriate and unprofessional drinking and dancing that somehow detracted from the superior-to-subordinate relationship crossed from the encouraged “[s]ocial interaction that contributes appropriately to unit cohesiveness and effectiveness” into an unprofessional relationship as described by AFI 1-1.

By eliciting only that Petitioner drank and danced in the presence of his subordinates, and later fell asleep, without eliciting how those acts were inappropriate and unprofessional conduct that detracted from the superior-to-subordinate authority in violation of AFI 1-1, the trial judge abused his discretion.

**B. The AFCCA erroneously found a factual basis for Petitioner’s offense by utilizing an incorrect standard. By analyzing the providence of Petitioner’s plea using an erroneous “light most favorable to the Government standard” of law, the AFCCA abused its discretion.**

In reviewing Petitioner’s challenge to the providence of his guilty plea, the AFCCA added unwarranted insulation to the trial judge’s conduct by adopting the following standard into its review: “[W]hen a plea of guilty is attacked for the first time on appeal, the facts will be viewed in the light most favorable to the [G]overnment.” Pet. 10a (citing *United States v. Arnold*, 40 M.J. 744, 745 (A.F.C.M.R. 1994) (citation omitted)).

In addition to invoking this standard, the AFCCA applied it, beginning its analysis of Petitioner’s guilty plea by “[v]iewing the facts in the light most favorable to the Government,” and concluding its analysis by stating,

We are convinced [Petitioner’s] behavior on the dance floor with AB, and in the presence of others, along with his behavior of drinking to excess and sleeping in a lounge chair is sufficiently inappropriate and unprofessional that it

detracted from the superior-to-subordinate relationship between [Petitioner] and [A1C] AB, as well as the other enlisted Airmen present.

Pet. 11a-12a.

As raised to the CAAF, the AFCCA erred in employing a “light most favorable to the Government” standard because the standard is predicated on a weak legal basis, is inconsistent with the CAAF’s precedent, and has been abandoned by every court other than the AFCCA. Supp. to the Pet. for Grant of Review at 21-25.

It is clear from the CAAF’s previous decisions that the correct standard of review for the providence of a guilty plea affords no deference to the Government. *See United States v. Saul*, 86 M.J. 30, 33 (C.A.A.F. 2025); *United States v. Navarro Aguirre*, 86 M.J. 43 (C.A.A.F. 2025) (both citing *Inabinette*, 66 M.J. at 322). Rather, the question at the AFCCA’s level of appeal is whether there is a substantial basis in law or fact for questioning the guilty plea. *Inabinette*, 66 M.J. at 322. There is no “thumb on the scale” in favor of the Government. As such, the AFCCA’s use of this incorrect standard was error. *See, e.g., June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299, 390 (2020) (finding error in the lower court’s use of the wrong legal standard)

The AFCCA’s erroneous view of the law that Petitioner placed before the CAAF appears to be rooted in a concurrence from a long-cast aside decision. In the instant case, the AFCCA cited to a published 1994 decision from the Air Force Court of Military Review: *United States v. Arnold*, 40 M.J. 744, 745 (A.F.C.M.R. 1994). Pet. 7a, 8a. *Arnold*, in turn, is

missing the full citation (at least in the Lexis database available to the Air Force) for where it gets its authority for the proposition; only a partial cite of “(C.M.A. 1989)” appears in the case.<sup>3</sup> But other cases discussed below reveal the source is a concurrence with no authority cited as a lawful foundation for its rule. Specifically, in *United States v. Hubbard*, 28 M.J. 203, 209 (C.M.A. 1989) (Cox, J., concurring), the concurrence postulated that, “where a guilty plea is first attacked on appeal, we must construe the evidence in a light most favorable to the Government.”

Aside from the problem with citing to a concurrence as binding authority, *Md. v. Wilson*, 519 U.S. 408, 412-13 (1997), the AFCCA’s continued embrace of the *Hubbard* concurrence is out of step with the law going back to at least 2010. Consistent with that, the Army Court of Criminal Appeals has employed the *Hubbard* concurrence only once since then, seemingly missing that it was from a concurrence. *United States v. Rogers*, ARMY 20190032, 2019 CCA LEXIS 507, at \*6 (A. Ct. Crim. App. Dec. 12, 2019). Likewise, the Navy-Marine Corps Court of Criminal Appeals has not turned to the *Hubbard* concurrence at all since last referencing it in *United States v. Shuman*, NMCCA 200900649, 2010 CCA LEXIS 501, at \*3 (N-M. Ct. Crim. App. Oct. 19, 2010).

The disappearance of reliance on the *Hubbard* concurrence since 2010—apart from the AFCCA—is significant and consistent with the CAAF’s treatment

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<sup>3</sup> It is unclear if this relates to the AFCCA’s parenthetical following the citation to *Arnold* that the authority upon which that case relied was omitted.

of that case. In 2010, the CAAF put an end to *Hubbard* and the line of cases addressing the closely related offense doctrine of which it was a part because they were “based on neither the text of the UCMJ, nor the *MCM*.” *United States v. Morton*, 69 M.J. 12, 15-16 (C.A.A.F. 2010).

Yet despite its weak foundation, the AFCCA repeatedly turns to *Hubbard* post-*Morton*, either through citing directly to the *Hubbard* concurrence itself or through its own published decision in *Arnold* that relies on the *Hubbard* concurrence. *See, e.g., United States v. Lawrence*, 2021 CCA LEXIS 459, at \*19 (A.F. Ct. Crim. App. Sep. 14, 2021) (citing *Hubbard*, 28 M.J. at 209 (Cox, J., concurring)); *United States v. Navarro Aguirre*, No. ACM 40354, 2024 CCA LEXIS 103, at \*18 (A.F. Ct. Crim. App. Mar. 11, 2024), *rev’d on other grounds*, 86 M.J. 43 (C.A.A.F. 2025); *United States v. Sanger*, No. ACM S32773, 2025 CCA LEXIS 370, at \*41 (A.F. Ct. Crim. App. Aug. 7, 2025) (citing *Arnold*, 40 M.J. at 745); *United States v. Keilberg*, No. ACM 40601, 2025 CCA LEXIS 481, at \*13 (A.F. Ct. Crim. App. Oct. 22, 2025) (citing *Arnold*, 40 M.J. at 745). That includes at least one case where the CAAF reversed the AFCCA to find a guilty plea improvident. *United States v. Saul*, No. ACM 40341, 2023 CCA LEXIS 546, at \*4 (A.F. Ct. Crim. App. Dec. 29, 2023), *rev’d*, 86 M.J. 30 (C.A.A.F. 2025).

Petitioner argued to the CAAF that it should grant review because the AFCCA should no longer persist as an outlier amongst the services and should apply the same standard of review for guilty pleas mandated by the CAAF and applied uniformly by the other services. *See* C.A.A.F. R. 21(b)(5)(B), 21(b)(5)(F).

Because the AFCCA applied the wrong law, it abused its discretion. That made a difference in this close case as the providence inquiry was strained in tying the facts to the necessary elements. The CAAF was apprised of this error, and yet did not grant review of the case.

## **II. The CAAF’s denial shows that the court has improperly narrowed the meaning of “on good cause shown.”**

Congress requires the CAAF to review three categories of cases. Relevant to this case is the third category; Congress mandates that the CAAF “shall” review the record in “all cases” that have been reviewed by a Court of Criminal Appeals where the CAAF granted review “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). In Petitioner’s case, there was such a petition and showing of good cause. Accordingly, under the CAAF’s own understanding of its jurisdiction-granting statute, it was “mandate[d] to review those cases.” *Id.*

While appeals to the U.S. Circuit Courts of Appeals are a matter of right, *see* 28 U.S.C. §§ 1291-1292, the CAAF must grant a service member’s petition for review only “on good cause shown.” 10 U.S.C. § 867(a)(3). The “on good cause shown” language has

existed since the original enactment of Article 67, UCMJ, in 1950. Uniform Code of Military Justice, Pub. L. No. 81-506, 64 Stat. 107, 129 (1950).

In a three-to-two decision, the CAAF grappled with the discretionary nature of its review when considering the propriety of an abatement *ab intio* 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 . . . 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)).

In equating "good cause" to this Court's standard for granting 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, "Counsel 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." *Id.* (quoting Legal Services, Dep't of the Army, Pamphlet No. 27-173, Trial Procedure 247 (1992)) (emphasis added). Rather, 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.

But “good cause’ is a capacious concept, which vests significant discretion in officials exercising their pertinent powers.” Eugene Fidell, Brenner M. Fissell & Philip D. Cave, *Equal Supreme Court Access For Military Personnel: An Overdue Reform*, 131 YALE L.J. F. 1, 12 (2021). *Black’s Law Dictionary* defines “good cause shown” as a “legally sufficient reason.” *Good cause shown* (“See *good cause* under CAUSE (2)”), *Cause* 2. (“good cause. (16c) A legally sufficient reason.”), BLACK’S LAW DICTIONARY (12th ed. 2024). The CAAF’s rules do not meaningfully elaborate on this definition, simply requiring “argument showing why there is good cause to grant the petition, demonstrating with particularity why the errors assigned are materially prejudicial to the substantial rights of the appellant.” C.A.A.F. R. 21(b)(5). “Where applicable,” if a condition enumerated under C.A.A.F. Rule 21(5) exists, such a condition must be noted, but the rule does not directly tie those various conditions to a showing of “good cause.” *Id.* Whatever “guidelines”—per *Rorie*—are expressed in the CAAF’s

rules, none explicitly define “good cause” but rather explain the term in the negative; good cause would not exist without an error that is “materially prejudicial to the [appellant’s] substantial rights.” C.A.A.F. R. 21(b)(5).

This Court can now review cases the CAAF “refused to grant.” 28 U.S.C. § 1259. Previously, other than cases that fell within the CAAF’s mandatory jurisdiction, this Court could only review cases where the CAAF granted review—which inherently meant there was “good cause shown”—or otherwise granted relief. *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. 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 no longer the “supreme court of the military justice system.” *McPhail v. United States*, 1 M.J. 457, 462 (C.M.A. 1976). This Court is.

### CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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