

No. _____

IN THE
Supreme Court of the United States

RICKY Z. BARLOW,
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. Those parties are Airman Ricky Z. Barlow, 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 S. Ct. R. 14.1(b)(iii).

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT.....	ii
RELATED PROCEEDINGS	ii
TABLE OF CONTENTS	iii
APPENDIX	iv
TABLE OF AUTHORITIES.....	v
INTRODUCTION	1
PETITION FOR A WRIT OF CERTIORARI	1
DECISIONS BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
I. Petitioner is convicted of sexually assaulting the complaining witness.....	3
II. MP disclosed exculpatory evidence to the Government. That evidence is never disclosed to trial defense counsel.	3
III. Over a year after Petitioner is convicted, MP discloses this information to the Petitioner’s appellate counsel.....	4
REASONS FOR GRANTING THE PETITION	5
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.....	5

A. By statute, the CAAF is required to review all cases where a petitioner shows “good cause.”	5
B. Petitioner demonstrated good cause.....	8
II. Petitioner’s constitutional right to be provided with exculpatory information under <i>Brady</i> was egregiously violated.....	8
A. The evidence was material and favorable to the Petitioner’s defense.	9
B. The Government failed to disclose the evidence.	9
C. There is prejudice.	10
CONCLUSION	10

APPENDIX

CAAF Order, <i>United States v. Barlow</i> , No. 25-0234/AF (January 6, 2026).....	1a
CAAF Order, <i>United States v. Barlow</i> , No. 25-0234/AF (December 1, 2025)	2a
Air Force Court Opinion, <i>United States v. Barlow</i> , No. ACM 40552 (June 12, 2025)	3a

TABLE OF AUTHORITIES

Cases

<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	1, 8
<i>McPhail v. United States</i> , 1 M.J. 457 (C.M.A. 1976).....	8
<i>Randolph v. HV</i> , 76 M.J. 27 (C.A.A.F. 2017)	7
<i>United States v. Byrd</i> , 53 M.J. 35 (C.A.A.F. 2000)	7
<i>United States v. Caprio</i> , 12 M.J. 30 (C.M.A. 1981).....	6
<i>United States v. Roan</i> , 86 M.J. 159 (C.A.A.F. 2025)	9, 10
<i>United States v. Roberts</i> , 59 M.J. 323 (C.A.A.F. 2004)	9
<i>United States v. Rodriguez</i> , 67 M.J. 110 (C.A.A.F. 2009)	6, 7
<i>United States v. Rorie</i> , 58 M.J. 399 (C.A.A.F. 2003)	6, 7

Statutes

10 U.S.C. § 802(a)(1)	2
10 U.S.C. § 866.....	2
10 U.S.C. § 867(a)(3)	2
28 U.S.C. § 1259.....	8
28 U.S.C. § 1259(3)	2

Other Authorities

Legal Services, Dep't of the Army, Pamphlet No. 27-173, Trial Procedure 247 (1992)	7
S. REP. NO. 98-53 (1983)	7

INTRODUCTION

Petitioner was convicted of sexually assaulting the complaining witness (CW). Pet. App. 4a. Prior to the alleged assault, Petitioner and CW had a consensual sexual relationship. Pet. App. 5a-6a. After CW ended her relationship with Petitioner, CW started dating MP, another servicemember. Pet. App. 6a.

On the night of the incident, Petitioner and CW attended a Christmas Party without MP. Pet. App. 6a. CW became intoxicated at the party and returned to her home alone. Pet. App. 6a. Sometime after, the Petitioner knocked on CW's door, entered her room, sat on her bed, and the two had sex. Pet. App. 6a. Later, CW claimed the sex was nonconsensual. Pet. App. 6a-7a.

Over a year after Petitioner was convicted, his appellate counsel contacted MP. Mot. to Remand, *United States v. Barlow*, __ M.J. __, No. 25-0234/AF, 2025 CAAF LEXIS 982 (C.A.A.F. Dec. 1, 2025) [hereinafter “Mot. to Remand”], at 2. MP informed counsel that, prior to trial, he disclosed exculpatory information concerning the case to the Government. *Id.* But neither trial defense counsel nor Petitioner were provided this information. *Id.*

Despite this clear violation of *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Court of Appeals for the Armed Forces (CAAF) declined to grant review of this case. This was an abuse of discretion which this Court can and should review.

PETITION FOR A WRIT OF CERTIORARI

Airman Ricky Z. Barlow, United States Air Force, respectfully petitions for a writ of certiorari to review the CAAF's decision declining review.

DECISIONS BELOW

The decision of the Air Force Court of Criminal Appeals (Air Force Court) is unreported. It is available at 2025 CCA LEXIS 263, 2025 WL 1663605, and is reproduced at pages 3a-14a. The CAAF's decision denying review of the Petitioner's case is not yet reported. It is available at 2025 CAAF LEXIS 982 and reproduced at page 2a. The CAAF's decision denying reconsideration of its decision not to grant review is not yet reported. It is available at 2026 CAAF LEXIS 15, 2026 WL 374772, and is reproduced at page 1a.

JURISDICTION

The court of first instance exercised federal jurisdiction pursuant to 10 U.S.C. § 802(a)(1). 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 December 1, 2025. The CAAF denied a timely petition for reconsideration on January 6, 2026. And this Court granted the Petitioner's application for an extension of time to and including June 5, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1259(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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. Petitioner was convicted of sexually assaulting the complaining witness.

Petitioner and CW were friends and coworkers. Pet. App. 5a. On several occasions, the two engaged in consensual sexual intercourse. Pet. App. 5a. But because Petitioner was not interested in a committed relationship, CW ended their relationship. Pet. App. 5a-6a.

Shortly after, CW started dating another servicemember, MP. Pet. App. 6a. On Christmas night, 2022, CW attended a party with Petitioner. Pet. App. 6a. MP did not attend the party. Pet. App. at 6a. At that party, CW became intoxicated and went home by herself. Pet. App. 6a.

Later, Petitioner went to CW's home, knocked on her door, and she let him in. Pet. App. 6a. Thereafter, Petitioner sat on her bed, kissed CW, and they had sex. Pet. App. 6a. CW claimed the kiss and the sex were nonconsensual. Pet. App. 6a.

Petitioner was ultimately charged and convicted of sexually assaulting CW. Pet. App. 4a.

II. MP disclosed exculpatory evidence to the Government. That evidence was never disclosed to trial defense counsel.

MP and CW were dating at the time of the alleged sexual assault. Supplement Brief to the Petition for Grant of Review, *United States v. Barlow*, __ M.J. __, No. 25-0234/AF, 2025 CAAF LEXIS 982 (C.A.A.F. Dec. 1, 2025) [hereinafter "Supp. Br."], at 3. However, soon after the incident they ended their relationship. *Id.* Despite this, they remained friends and continued to talk. *Id.*

At some point after breaking up, but before Petitioner's trial, CW contacted MP and told MP information that MP believed should be disclosed to the parties. *Id.* This information went directly to the issue of consent in Petitioner's case and fell under Rule 412 (i.e., evidence of CW's past sexual history). So, MP contacted the Government and provided that information. *Id.*

In response, the Government informed MP that they were obligated to tell the Petitioner's trial defense team. *Id.* MP relayed that was fine because he believed all parties should know. *Id.* Despite telling MP it would inform the trial defense team about this information, the Government never did. *Id.* at 3-4.

III. Over a year after Petitioner was convicted, MP disclosed this information to the Petitioner's appellate counsel.

Following his conviction, Petitioner appealed to the Air Force Court and raised several issues. Pet. App. 5a. Unaware of the Government's failure to disclose exculpatory information, Petitioner did not raise a *Brady* issue to the Air Force Court. *See id.* The Air Force Court declined to grant relief on the issues raised. *Id.*

After his appeal to the Air Force Court concluded, Petitioner petitioned the CAAF for a grant of review. Supp. Br. at 4. Before filing his supplement brief in support of his petition, Petitioner requested that his appellate counsel contact MP to determine the veracity of certain post-trial statements MP made. *See id.* Upon contacting MP, MP voluntarily disclosed exculpatory information. *See supra* § II.

Relevant to this appeal, Petitioner then filed two briefs with the CAAF. First, he filed a supplement

brief, asking the CAAF to grant review of the potential *Brady* issue. *See generally* Supplement Brief. In the alternative, Petitioner asked the CAAF to remand to the Air Force Court for additional post-trial factfinding and to have the Air Force Court consider the *Brady* issue in the first instance. *See generally* Mot. to Remand.

The CAAF declined both to review this case and to remand to the Air Force Court.

REASONS FOR GRANTING THE PETITION

The CAAF must review all cases where a petitioner demonstrates good cause. 10 U.S.C. § 867. Here, Petitioner showed good cause because the Government violated its constitutional obligation to provide exculpatory information to Petitioner before trial.

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” review categories: capital cases and cases sent to the CAAF by the Judge Advocate General. 10 U.S.C. § 867(a)(1)-(2). 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. . . . However, 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).

The final category of cases encompass the CAAF’s discretionary review. 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).

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 the Supreme Court [(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.

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). But the statute requires the converse: 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." *Rorie*, 58 M.J. 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).

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 no longer the “supreme court of the military justice system.” *Contra McPhail v. United States*, 1 M.J. 457, 462 (C.M.A. 1976). This Court is.

B. Petitioner demonstrated good cause.

In his petition for grant of review at the CAAF, Petitioner raised the *Brady* issue discussed in § II, *infra*. Because Petitioner 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. Petitioner’s constitutional right to be provided with exculpatory information under *Brady* was egregiously violated.

“[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. at 87. To demonstrate a *Brady* violation, an appellant must show that: (1) the evidence was favorable; (2) the evidence was suppressed; and (3) the failure to

disclose the evidence resulted in prejudice, “i.e., the evidence was material.” *United States v. Roan*, 86 M.J. 159, 163 (C.A.A.F. 2025). For the CAAF, materiality is a question of law reviewed de novo. *United States v. Roberts*, 59 M.J. 323, 326 (C.A.A.F. 2004).

A. The evidence was material and favorable to the Petitioner’s defense.

The evidence withheld by the Government, which falls under Rule 412, went directly to CW’s credibility, who was the only eyewitness to the alleged assault. *See* Pet. App. 6a-7a; Supp. Br. at 6. Furthermore, the evidence withheld by the Government involved facts similar to those at issue in this case—they both involve CW being intoxicated. *Compare* Pet. App. 6a-7a, *with* Supp. Br. at 6. And, that evidence goes directly to whether she consented to having sex with Petitioner on the night of the incident. Despite the materiality of this evidence, the Government withheld it.

B. The Government failed to disclose the evidence.

Based on the information provided to Petitioner, there is no doubt that exculpatory evidence was withheld by the Government. MP, who was a Government witness at trial and romantic partner of CW, told the Government this information prior to trial. Supp. Br. at 7. Nevertheless, the Government never provided this information to Petitioner or his trial defense counsel.

Making matters worse, the Government misled MP into thinking it would tell Petitioner’s defense team. This further hampered Petitioner’s ability to independently obtain this information through MP.

After all, MP thought Petitioner's trial attorneys already knew this information.

C. There is prejudice.

Under military law, once materiality is established, prejudice is a foregone conclusion. *Roan*, 86 M.J. at 163. Therefore, because the evidence was material, the Petitioner was prejudiced when the Government withheld it.

CONCLUSION

This Court can review the CAAF's decisions to deny review. Here, the CAAF abused its discretion by failing to follow its statutory mandate to review all cases where good cause is shown. Because the Petitioner showed good cause, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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