No. 25-563

In the Supreme Court of the United States

LOGAN A. MCLEOD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Armed Forces has statutory authority to review the correctness of factual findings underlying a defendant's conviction.

ADDITIONAL RELATED PROCEEDINGS

General Court-Martial (Maxwell Air Force Base, AL):

United States v. *McLeod* (Aug. 24, 2022) (no docket number)

United States Air Force Court of Criminal Appeals:

United States v. *McLeod*, No. ACM 40374 (May 1, 2024)

United States Court of Appeals for the Armed Forces:

United States v. *McLeod*, No. 24-0189 (June 11, 2025)

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OPINIONS BELOW

The summary order of the Court of Appeals for the Armed Forces (Pet. App. 1a-2a) is available at 2025 WL 1899580. The opinion of the Air Force Court of Criminal Appeals (Pet. App. 5a-31a) is available at 2024 WL 1928759.

JURISDICTION

The judgment of the Court of Appeals for the Armed Forces was entered on June 11, 2025. On September 2, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including November 8, 2025. The petition for a writ of certiorari was filed on November 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1259(3).

STATEMENT

Following a partial guilty plea and a trial by general court-martial, petitioner was convicted on specifications of attempted premeditated murder, attempted conspiracy to commit rape, attempted conspiracy to commit kidnapping, attempted aggravated assault by strangulation upon a person under the age of 16, attempted aggravated assault by suffocation upon a person under the age of 16, attempted assault upon a person under the age of 16, attempted rape by force, attempted rape of a child, attempted kidnapping, attempted kidnapping of a minor, attempted production of child pornography, attempted distribution of child pornography, attempted wrongful possession of a controlled substance with intent to distribute, and attempted aggravated assault by suffocation upon a person under the age of 16, all in violation of Article 80 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 880; as well as obstruction of justice, in violation of Article 131b of the UCMJ, 10 U.S.C. 931b. Pet. App. 6a-7a. Petitioner was sentenced to 35 years of confinement, dishonorable discharge, a reduction in grade, and a reprimand. *Id.* at 7a. The Air Force Court of Criminal Appeals (AFCCA) affirmed. *Id.* at 5a-31a. The Court of Appeals for the Armed Forces (CAAF) granted discretionary review, *id.* at 3a-4a, and affirmed in a summary order, *id.* at 1a-2a.

1. Petitioner was a Senior Airman in the United States Air Force, stationed in Alabama. Pet. App. 5a, 8a. In 2021, a woman (JO) reported petitioner to the Air Force Office of Special Investigations (OSI) after petitioner suggested to her that she be his "kidnap partner" and expressed in graphic detail his desire to rape a child aged 14 or 15. *Id.* at 9a. During the next six weeks, as OSI monitored the communications, petitioner and JO

exchanged hundreds of text messages on the subject of petitioner's desire to kidnap and rape a child. *Ibid.*

Petitioner and JO eventually agreed to kidnap JO's friend "AB," hold her captive and rape her in an Airbnb rental house for ten days, and then send her to JO's home to be a "sex slave." Pet. App. 9a-10a. Petitioner and JO discussed in detail how petitioner would commit those offenses, including the date of the planned kidnapping, how to secure AB using specific restraints, and how to "soundproof" the house. *Id.* at 10a, 28a. Petitioner instructed JO to make the Airbnb reservation for their chosen house, sent JO $230 for the reservation payment, and discussed which room would be best for confining AB. *Id.* at 10a, 23a. Petitioner also discussed in detail how he would rape AB. *Id.* at 10a.

Petitioner's plans later shifted. Pet. App. 10a-11a. Petitioner began discussing his desire to kidnap and rape a child and her mother together, then murder the mother in front of the child. *Ibid.* He and JO discussed the details and logistics of how to carry out that plan, and JO put petitioner in touch with a contact whom petitioner believed was a sex trafficker, but who was actually a law-enforcement agent. *Id.* at 11a. Petitioner reached an agreement with the "sex trafficker" and paid $150 as a down payment for delivery of a mother ("Sarah") and a 14-year-old girl ("Caitlin") to the Airbnb on a specified date. *Ibid.*

In the week leading up to the planned crimes, petitioner continued to discuss with JO the details of how he would kidnap, restrain, torture, and rape the child and her mother, record videos of those actions for later sale, and then suffocate the mother to death. Pet. App. 11a-12a. Petitioner procured numerous items for those

purposes, gave JO money to travel to Alabama, and told JO to delete her text messages. *Id.* at 21a, 29a.

On the appointed date for the kidnapping, JO called petitioner and pretended that the mother and child were escaping after being dropped off by the sex trafficker. Pet. App. 12a. Petitioner drove to the Airbnb, where he was apprehended by law enforcement. *Ibid.* Officers found chains, tape, and other supplies in the trunk of petitioner's car. *Ibid.*

2. Petitioner was tried by a military judge sitting as a general court-martial, and pleaded guilty to some specifications and was convicted after a trial on others. Pet. App. 6a-7a. Petitioner pleaded guilty and was convicted of one specification each of attempted rape by force, attempted rape of a child, attempted kidnapping, attempted kidnapping of a minor, attempted production of child pornography, attempted distribution of child pornography, and attempted wrongful possession of a controlled substance with intent to distribute, all in violation of Article 80 of the UCMJ; three specifications of attempted aggravated assault by suffocation upon a person under the age of 16, in violation of Article 80 of the UCMJ; and one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. 931b. Pet. App. 6a. Petitioner was convicted, contrary to his pleas, of one specification each of attempted premeditated murder, attempted conspiracy to commit rape, attempted conspiracy to commit kidnapping, attempted aggravated assault by strangulation upon a person under the age of 16, attempted aggravated assault by suffocation upon a person under the age of 16, and attempted assault upon a person under the age of 16, all in violation of Article 80 of the UCMJ, 10 U.S.C. 880. Pet. App. 7a.

Petitioner was sentenced to a dishonorable discharge, confinement for 35 years, a reduction of grade, and a reprimand. Pet. App. 7a.

3. The AFCCA affirmed in a nonprecedential opinion. Pet. App. 5a-31a.

Among other things, the AFCCA evaluated the evidence for both "legal sufficiency" and "factual sufficiency." Pet. App. 13a; see *id.* at 12a-25a. The court explained that "[t]he test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 12a (citation omitted). And it explained that the test for "factual sufficiency," under the governing statutes, required the accused to "'make[] a specific showing of deficiency of proof,'" after which the court could "'weigh the evidence and determine controverted questions of fact'" under a deferential standard, granting relief only if "'clearly convinced that the finding of guilty was against the weight of the evidence.'" *Id.* at 13a-15a (quoting 10 U.S.C. 866(d)(1)(B)).

Here, the AFCCA found neither "legal" nor "factual" insufficiency. Pet. App. 12a-25a. As to factual sufficiency in particular, the court made clear that its review of the court-martial's factual findings was "not * * * a close call for any of the specifications at issue," and that it was "convinced of [petitioner's] guilt * * * beyond a reasonable doubt." *Id.* at 14a.

4. The CAAF granted discretionary review and affirmed in a summary order. Pet. App. 1a-2a, 3a-4a.

Citing its recent decision in *United States* v. *Csiti*, 85 M.J. 414 (C.A.A.F. 2025), the CAAF observed that it lacks statutory authority to review whether the court-martial's factual findings were "factually sufficient" by

weighing the evidence for itself. Pet. App. 1a. In *Csiti*, the CAAF had explained that the governing statutes do not authorize it "to come to its own conclusion as to whether a finding of guilty was against the weight of the evidence." 85 M.J. at 417. *Csiti* had relied on Article 67(c)(4) of the UCMJ, which provides that the CAAF "shall take action only with respect to matters of law," 10 U.S.C. 867(c)(4). See *Csiti*, 85 M.J. at 418.

In *Csiti*, the CAAF had also rejected petitioner's argument that a 2021 amendment in Article 67(c)(1)(C) changed that limitation by permitting the court to "act" "with respect to" certain factual findings. See 85 M.J. at 418. The court reasoned that it could "act" on a factual finding based solely on legal grounds, and therefore Article 67(c)(1)(C) did not create an exception to the rule that it cannot review the correctness of factual findings. *Ibid.*

The CAAF accordingly affirmed the AFCCA's finding of legal sufficiency and declined to review factual sufficiency. Pet. App. 1a. The CAAF also rejected petitioner's argument that the AFCCA itself had committed legal error by "'erroneously interpret[ing] and appl[ying]'" the legal standard for the AFCCA's review of the court-martial's factual findings, observing that any error "was harmless." *Id.* at 1a-2a.

ARGUMENT

Petitioner contends (Pet. 6-13) that the CAAF erred by finding that it lacks statutory authority to review whether the factual findings underlying his conviction were correct. The CAAF's decision is correct and does not conflict with any decision of this Court or any other court. No further review is warranted.

1. The CAAF correctly found that it lacks statutory authority to review whether factual findings are correct,

which military appellate courts call "factual sufficiency review." *United States* v. *Csiti*, 85 M.J. 414, 418 (C.A.A.F. 2025).

a. The authority of military appellate courts, Article I courts of special jurisdiction, is limited by statute. See *United States* v. *Denedo*, 556 U.S. 904, 912 (2009); *Clinton* v. *Goldsmith*, 526 U.S. 529, 533-534 (1999). The relevant statutes provide a right to appeal for an accused who, as here, is convicted of crimes in general court-martial proceedings: he may appeal to the relevant service's Court of Criminal Appeals—here, the AFCCA—under Article 66 of the UCMJ, see 10 U.S.C. 866(a)(1), and, may then (if still aggrieved) seek review by the CAAF as provided under Article 67, see 10 U.S.C. 867(a).

Congress has given the AFCCA, on first-line review of the conviction, authority to review "whether the finding[s]" of fact by the court-martial are "correct in fact," to "determine controverted questions of fact," and to assess whether a "finding of guilty was against the weight of the evidence" under the standard specified in Article 66, all of which the statute refers to as "factual sufficiency review." 10 U.S.C. 866(d)(1)(B); see *United States* v. *Clark*, 75 M.J. 298, 299-300 (C.A.A.F. 2016). Previously, that review required the AFCCA to determine for itself whether the evidence supported a defendant's conviction "beyond a reasonable doubt," but in 2021 Congress made the standard of review more deferential to the court-martial. Pet. App. 14a (citation omitted); see *id.* at 13a-14a. Here, the AFCCA conducted such review in this case and made clear that it would uphold the factual findings underpinning petitioner's convictions even under the previous, less deferential, standard because it was independently "convinced"

of petitioner's guilt "beyond a reasonable doubt." *Id.* at 14a n.6.

In contrast, the CAAF's statutory jurisdiction is "narrowly circumscribed," *Goldsmith*, 526 U.S. at 535, and Congress has never provided the CAAF authority to engage in its own weighing of the evidence. Instead, in Article 67(c)(4) of the UCMJ, Congress has specified that the CAAF "shall take action only with respect to matters of law." 10 U.S.C. 867(c)(4). That limitation on the CAAF's review has existed since Congress first enacted the UCMJ. See 50 U.S.C. 654(d) (1952); see also *Csiti*, 85 M.J. at 418 n.5. Indeed, the first opinion published by the Court of Military Appeals (the predecessor to the CAAF) "recognized that Congress had limited [that court] to correction of errors of law and that [its] writ did not extend to questions of fact." *Clark*, 75 M.J. at 299-300 (citing *United States* v. *McCrary*, 1 C.M.A. 1, 3 (1951)). And since then, the CAAF has repeatedly held that it cannot engage in the sort of "factual sufficiency" review that Congress provided to the AFCAA. See *ibid.*

b. Petitioner acknowledges (Pet. 8-9) the "general prohibition on the CAAF acting with respect to matters that are not law," but claims that 2021 amendments to the UCMJ created an exception. In particular, petitioner relies on Congress's amendment to Article 67(c)(1)(C), which in its current form states that the CAAF "may act * * * with respect to" "the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or mod[i]fied by the Court of Criminal Appeals as incorrect in fact." 10 U.S.C. 867(c)(1)(C). Petitioner asserts (Pet. 8-11) that Article 67(c)(1)(C) "conflict[s]" with the restriction in Article 67(c)(4) that limits the CAAF's review to "matters of law," and therefore must be read as

an implicit "exception" that allows the CAAF to "conduct its own factual sufficiency review" on top of the AFCCA's.

As the CAAF has explained, however, no such conflict exists. Read in conjunction with 10 U.S.C. 867(c)(4)'s continued constraint that the CAAF "shall take action only with respect to matters of law," the CAAF's authority to "act * * * with respect to" the factual findings simply authorizes review for legal error in those findings, 10 U.S.C. 867(c)(1)(C); see *Clark*, 75 M.J. at 299. Indeed, this case contains an example of such review: had the CAAF accepted petitioner's claim that the AFCCA "erroneously interpreted and applied the amended factual sufficiency standard," Pet. App. 2a, it would have had the authority to act on that conclusion. See *Clark*, 75 M.J. at 300 ("[W]e have held that we retain the authority to review factual sufficiency determinations of the CCAs for the application of 'correct legal principles,' but only as to matters of law.") (citation omitted).

Petitioner accordingly errs in asserting (Pet. 11) that the CAAF's interpretation renders Subparagraph (c)(1)(C) "meaningless." Petitioner also posits (Pet. 9-10) that Subparagraph (c)(1)(C) should be read more broadly, either because it is the more "specific" provision in this context, or because it is "later in time," and Congress may have "overlook[ed] the need to modify" the constraint that the CAAF review only legal questions. But even assuming some sort of inconsistency, the more specific provision as to the grounds on which the CAAF may act—as opposed to the potential objects of its actions—is Subparagraph (c)(4), which instructs that the CAAF "shall take action only with respect to matters of law." 10 U.S.C. 867(c)(4). And petitioner's

reading could effectively nullify Subparagraph (c)(4)'s restriction by permitting the CAAF to decide for itself "what the facts are." *Csiti*, 85 M.J. at 418.

More fundamentally, it is extremely unlikely that Congress would have substantially altered the long-standing scope of the CAAF's review by giving it authority to "conduct its own factual sufficiency review," Pet. 8, without expressly saying so. Nor is it likely to have "overlook[ed]" (Pet. 10) that longstanding restriction on the CAAF's review, which appears just a few subparagraphs later within the same subsection of the statute, and which the CAAF has for decades interpreted to bar that kind of review. To the contrary, "in approaching a claimed conflict," this Court "come[s] armed with the strong presumption that repeals by implication are disfavored and that Congress will specifically address pre-existing law when it wishes to suspend its normal operations in a later statute." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 510 (2018) (brackets, citation, and internal quotation marks omitted).

Petitioner hypothesizes (Pet. 12-13) that Congress intended to give the CAAF new authority to review the correctness of factual findings as a way to "balance[]" the effect of different amendments that restricted the scope of the AFCCA's factual review. See Pet. App. 13a-14a (explaining those changes); see also *United States* v. *Harvey*, 85 M.J. 127, 129-132 (C.A.A.F. 2024) (same). But nothing in the statutory text supports that hypothesis—particularly since Congress kept Subparagraph (c)(4) in place without change. The more likely explanation is that Congress codified the CAAF's practice of reviewing legal questions arising from the AFCCA's factual determinations, thus making clear that it expected the CAAF to review the AFCCA's interpretation

of the new legal standard governing the AFCCA's factual determinations.

2. In any event, this case would be an unsuitable vehicle for further review of the question presented.

For one thing, even if petitioner were correct that Article 67(c)(1)(C) permits the CAAF to weigh the evidence for itself, the CAAF has not yet decided whether that provision extends to cases like petitioner's. See *Csiti*, 85 M.J. 417 & n.3. In particular, the CAAF has suggested that Article 67(c)(1)(C) might authorize that court to "act" on factual findings only when the AFCCA has determined that a finding was "'incorrect in fact,'" *ibid.*, such as when that court decides to "dismiss, set aside, or modify the finding, or affirm a lesser finding," 10 U.S.C. 866(d)(1)(B)(iii). Here, however, the AFCCA affirmed the court-martial's factual findings in full. Pet. App. 8a. It is thus unclear that petitioner would obtain the kind of factual review that he seeks even if he prevailed in this Court. And the fact that this case implicates that novel and so-far unaddressed question about the reach of Article 67(c)(1)(C) is another reason to deny certiorari.

In addition, even if the CAAF reviewed the factual findings here and weighed the evidence for itself, petitioner offers no reason to think he would be entitled to relief. The AFCCA made clear that the factual findings were not "a close call for any of the specifications at issue" and that the evidence demonstrated petitioner's guilt "beyond a reasonable doubt." Pet. App. 14a n.6. And the CAAF, in turn, rejected petitioner's argument that the AFCCA applied the wrong legal standard in reviewing the court-martial's fact findings, finding that any error was "harmless." *Id.* at 2a. The record in this case, which includes recorded phone calls and hundreds

of pages of text messages between petitioner and JO, reflects no "lack of clarity" about petitioner's "unwavering intent" to kidnap and rape AB; "conclusively demonstrates" petitioner's "criminal, specific intent to kill 'Sarah'"; and is "replete with evidence of [petitioner's] overt acts." *Id.* at 20a-23a. There is no significant likelihood that the CAAF would overturn his convictions on factual grounds.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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