No. _____

IN THE

Supreme Court of the United States

JAKALIEN J. COOK,
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

For almost all non-capital offenses from the timeframe of Petitioner's convictions, criminal defendants in courts-martial are sentenced in accordance with statutorily or presidentially prescribed ranges within the Uniform Code of Military Justice (UCMJ), not with a set of sentencing guidelines.[1] When a military judge incorrectly calculates the applicable confinement range, the sentence adjudicator, a panel of military members or the military judge, must adjudge a sentence within the resulting erroneous range. In the present case, the Court of Appeals for the Armed Forces (CAAF) affirmed the Air Force Court of Criminal Appeals (AFCCA) and decided that an incorrect calculation of the applicable confinement range does not inherently undermine the fairness of the sentencing process. Therefore, the CAAF determined that the incorrect calculation does not implicate due process rights, and the issue can be waived at trial.

The question presented is:

Whether a criminal defendant can waive a judge's incorrect maximum punishment calculation.

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[1] Military sentencing parameters which the President prescribed on July 28, 2023, apply only in cases in which all findings of guilty are for offenses committed on or after December 28, 2023, and are not relevant to this petition. *See* Exec. Order No. 14103, 88 Fed. Reg. 50535, § 3 (July 28, 2023); Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* (Jan. 24, 2024), ¶ 19.16. A few Uniform Code of Military Justice (UCMJ) offenses, although none of which Petitioner was convicted, have statutory mandatory minimum sentences.

PARTIES TO THE PROCEEDING

All parties to this proceeding appear in the caption on the cover page of this petition.

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 purposes of S. CT. R. 14.1(b)(iii).

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INTRODUCTION

Petitioner lived with QM, an alleged co-conspirator, in the military dorms at Davis Monthan Air Force Base (AFB), Arizona. Petitioner and QM became close friends, continuing their friendship after QM was discharged and remained in the local area. QM had money troubles after his discharge, and he posted on Snapchat that he was looking for work. An unknown person contacted QM through Snapchat and offered him money to drive people.

On Sunday, August 22, 2021, QM texted Petitioner and asked Petitioner if he wanted to hang out. They initially planned to visit Phoenix, which is northwest of Davis Monthan AFB. Petitioner, whose car was undergoing a diagnostic check at a local Firestone, rented a sport utility vehicle (SUV) from the Tucson airport for the trip, and extended the rental through August 23, 2021.

Petitioner and QM drove the SUV south to the town of Sierra Vista and then ended up in a town called Bisbee. QM then said to Petitioner: "I'm about to make some money." Calls began coming into QM's phone from random numbers that said, "no caller ID," and QM began texting frequently. Petitioner did not receive any of these calls or texts and was mainly using his phone for music.

QM and Petitioner were driving down a dirt road somewhere south of Sierra Vista when they stopped at a stop sign. A man spoke with QM, then the man opened the trunk of their vehicle and people entered the SUV, with three going into the back seat and two more entering the trunk.

Law enforcement agents later pulled Petitioner and QM over and arrested them with the five individuals in the SUV. Law enforcement agents later determined the five individuals were illegal aliens.[2] Military authorities subsequently charged Petitioner, in part, with the following:

> Violation of 10 U.S.C. § 934
>
> In that [Petitioner] did, within the State of Arizona, on or about 22 August 2021, transport [five aliens (listed each by name)] within the United States by means of passenger vehicle, knowing or in reckless disregard that they were aliens that entered the United States in violation of law, in violation of 8 [U.S.C.] § 1324, an offense not capital.
>
> Violation of 10 U.S.C. § 881
>
> In that [Petitioner] did, within the State of Arizona, on or about 22 August 2021, conspire with [QM] and unknown conspirators to commit an offense under the [UCMJ], to wit: transporting [five aliens (listed each by name)] within the United States by means of passenger vehicle, knowing or in reckless disregard that they were aliens that entered the United States in violation of law, in violation of 8 [U.S.C.] § 1324, an offense not capital, and in order to effect the object of the conspiracy, the said [QM] and [Petitioner], did secure a rental vehicle, drive the vehicle near the US-Mexico border, and transported the aforementioned aliens in violation of law.

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[2] "The term 'alien' means any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3) (2018).

DECISIONS BELOW

The AFCCA decision in Petitioner's case is not reported. It is available at 2024 CCA LEXIS 276, 2024 WL 3326992, and reprinted in the Appendix at Pet. App. 20a. The CAAF's decision in Petitioner's case is not yet reported. It is available at 2025 CAAF LEXIS 726, 2025 WL 2502596, and reprinted in the Appendix at Pet. App. 1a.

JURISDICTION

The CAAF issued its decision on August 28, 2025. This Court has jurisdiction under 28 U.S.C. § 1259.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

In relevant part, 10 U.S.C. § 856, *Sentencing*, provides:

> (a) Sentence Maximums.-The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.
>
> . . . .
>
> (c) Imposition of Sentence.-
>
> > (1) In general.-In sentencing an accused under section 853 of this title (article 53), a court-martial shall impose punishment that is sufficient, but not greater than necessary, to promote justice and to maintain good order and discipline in the armed forces . . . .

In relevant part, 10 U.S.C. § 934 (2018), *General Article*, provides:

> Though not specifically mentioned in this chapter, all . . . crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

In relevant part, Article 134, *General Article*, of the *Manual for Courts-Martial*, *United States* (2019 ed.), provides:

> b. *Elements*. The proof required for conviction of an offense under Article 134 depends upon the nature of the misconduct charged. If the conduct is punished as a crime or offense not capital, the proof must establish every element of the crime or offense as required by the applicable law.
>
> . . . .
>
> (3) For clause 3 offenses under Article 134, the following proof is required:
>
> (a) That the accused did or failed to do certain acts that satisfy each element of the federal statute . . . and
>
> (b) That the offense charged was an offense not capital.

In relevant part, 8 U.S.C. § 1324, *Bringing in and harboring certain aliens*, provides:

> (a) Criminal penalties
>
> (1)(A) Any person who-
>
> . . . .
>
> (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;
>
> . . . .
>
> shall be punished as provided in subparagraph (B).
>
> (B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs-
>
> . . . .
>
> (ii) in the case of a violation of subparagraph (A)(ii) . . . be fined under title 18, imprisoned not more than 5 years, or both[.]

In relevant part, Rule for Courts-Martial (R.C.M.)[3] 1003 (2019), *Punishments*, provides:

> (c) Limits on punishments.
>
> (1) Based on offenses.
>
> (B) Offenses not listed in Part IV.
>
> (ii) Not included or related offenses. An offense not listed in Part IV and not included in or closely related to any offense listed therein is punishable as authorized by the United States Code, or as authorized by the custom of the service. When the United States Code provides for confinement for a specified period or not more than a specified period the maximum punishment by court-martial shall include confinement for that period.

[3] Unless otherwise noted, all references in this petition to the UCMJ, Military Rules of Evidence (Mil. R. Evid.), and the R.C.M. are to the *Manual for Courts-Martial, United States* (2019 ed.).

STATEMENT OF THE CASE

Petitioner, an Airman (E-2) in the United States Air Force (USAF), was convicted by a panel of military members (the functional equivalent of a jury), contrary to his pleas, of one charge and one specification of illegal transportation of five aliens within the United States in violation of 10 U.S.C. § 934 and of one charge and one specification of conspiracy to engage in illegal transportation of five aliens within the United States in violation of 10 U.S.C. § 881.[4] Both charges and specifications alleged that Petitioner violated federal offenses under 8 U.S.C. § 1324.[5] The court of first instance exercised federal jurisdiction pursuant to 10 U.S.C. § 802(a)(1).

Petitioner elected to be sentenced by a military judge. Prior to each party's presentation of sentencing evidence, the military judge asked the prosecutor what the maximum punishment was based on Petitioner's conviction under 10 U.S.C. § 934. The prosecutor responded, "[T]he maximum punishment is 25 years of confinement. Five years for each alien," relying upon 8 U.S.C. § 1324(a)(1)(B)(ii). Pet. App. at 100a. When the military judge asked if Petitioner's trial defense counsel agreed, she replied "Yes." *Id.* at

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[4] Appellant was also found guilty, consistent with his pleas, of absence without leave, breach of restriction, and wrongful use of a controlled substance, in violation of 10 U.S.C. §§ 886, 887b, 912a, and contrary to his pleas, of obstruction of justice in violation of 10 U.S.C. § 931b.

[5] "Article 134, UCMJ, creates three different types of crimes, commonly referred to as Clauses 1, 2, and 3 offenses . . . Clause 3 offenses involve noncapital crimes or offenses which violate federal law, including law made applicable through the Federal Assimilative Crimes Act." *United States v. Wells*, 85 M.J. 154, 156 (C.A.A.F. 2024) (citations omitted).

101a. Then, the prosecutor stated, "[T]he maximum overall would be . . . fifty-seven years and two months confinement . . . ."[6] *Id.* Petitioner's trial defense counsel agreed.

The military judge sentenced Petitioner to twenty-four months of confinement for the violation of 10 U.S.C. § 934 and twenty-four months of confinement for the violation of 10 U.S.C. § 881. The two twenty-four-month sentences were served concurrently. Pet. App. at 70a, 73a, 78a.

Petitioner raised fourteen issues on appeal to the AFCCA,[7] and the CAAF granted review of four issues, two of which are relevant to this petition for certiorari.[8] The CAAF held that a maximum punishment calculation error claim can be waived, that the error does not implicate due process rights, and that Petitioner waived the claim. *Id.* at 2a.

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[6] Fifty years of the maximum confinement time came from the prosecutor's calculation of a maximum punishment for the single violation of 10 U.S.C. § 934 (five aliens times five years equaling twenty-five years) and single violation of 10 U.S.C. § 881 (five aliens times five years equaling twenty-five years).

[7] Pet. App. at 22a-24a.

[8] Pet. App. at 3a. Issues III and IV are relevant to this petition for certiorari: (III) Whether an appellant can waive the military judge's incorrect maximum punishment calculation that tripled Appellant's punitive exposure, and (IV) Whether the military judge erred in calculating the maximum punishment for the offense of illegally transporting aliens as a violation of 8 U.S.C. § 1324.

REASONS FOR GRANTING THE PETITION

Petitioner was subject to an unlawful exaggeration of punitive exposure and perceived severity of his conduct by the military judge. While Petitioner's trial defense counsel failed to realize and object to the prosecutor and military judge's error in calculating the maximum available confinement, the issue was not waived. The issue was not waived because Petitioner did not intentionally relinquish or abandon the issue and because the military judge was responsible for the correct calculation. Furthermore, a correct sentence calculation is a substantial due process right, entitling Petitioner to presumed prejudice when the calculation is incorrect and heightened scrutiny for questions of waiver.

The CAAF's current holding allows criminal defendants, for no strategic or beneficial reason, to expose themselves to decades of additional punitive exposure and denies them the right to address that error on appeal. This Court's review would resolve this issue by answering an important question regarding substantial due process rights in criminal proceedings.

I. Mere Counsel Acquiescence Cannot Waive Substantial Due Process Rights

The responsibility for determining the correct confinement range rests with a military judge, not counsel. *United States v. Harden*, 1 M.J. 258, 259 (C.M.A. 1976). Here, the military judge incorrectly exposed Petitioner to a maximum period of confinement five times greater than the legally correct amount, increasing his punitive exposure by forty years of confinement. Additionally, while trial defense counsel agreed with the military judge's incorrect

calculation, the particular circumstances do not support waiver.

"This Court 'indulge[s] every reasonable presumption against waiver of fundamental constitutional rights.'" *Currier v. Virginia*, 585 U.S. 493, 521 (2018) (Ginsburg, J., dissenting) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)); *see also United States v. Jones*, 78 M.J. 37, 40 (C.A.A.F. 2018); *United States v. Sweeney*, 70 M.J. 296, 304 (C.A.A.F. 2011). The correct calculation of the United States Sentencing Guidelines (Guidelines) is a constitutional due process right. *Molina-Martinez v. United States*, 578 U.S. 189, 206 (2016) (applying the constitutional-right-waiver framework to "errors in the calculation of an advisory Guidelines sentence").

"A waiver of a constitutional right is effective if it 'clearly established that there was an intentional relinquishment [or abandonment] of a known right.'" *Jones*, 78 M.J. at 44 (quoting *Sweeney*, 70 M.J. at 303-04); *see United States v. Olano*, 507 U.S. 725, 733 (1993) ("waiver is the 'intentional relinquishment or abandonment of a known right.'"). Absent an objection at trial, courts consider the "particular circumstances of each case to determine whether there was a waiver," to include "strategic reason[s]" why the right would be relinquished or abandoned. *Jones*, 78 M.J. at 40. If unintentional, plain error review applies. *Id.*; *see Sweeney*, 70 M.J. at 304; *infra* § II.

There is no strategic reason Petitioner would relinquish or abandon his right to fair sentencing proceedings. Petitioner gained nothing by the trial defense counsel's acquiescence to the incorrect confinement range. Their acquiescence to the incorrect calculation only harmed Petitioner's

interests. The incorrect calculation allowed the military judge to consider the harm of Petitioner's offenses on a much larger spectrum, increasing the perceived severity of the crime and punitive exposure. Therefore, trial defense counsel's failure to object to the calculation was unintentional and forfeited the issue rather than waived it. *See Jones*, 78 M.J. at 44 (inferring forfeiture rather than waiver because there was no strategic reason to not object); *United States v. Harcrow*, 66 M.J. 154, 157 (C.A.A.F. 2008) (recognizing waiver of constitutional rights where the decision was part of a trial tactic). Since forfeited, this issue is evaluated under a plain error review. *Olano*, 507 U.S. at 732; *compare* Fed. R. Crim. P. 52(c), *with* Mil. R. Evid. 103(f); *see Jones*, 78 M.J. at 44; *infra* § II.

Furthermore, "[p]rimary responsibility for determining the legal limits of punishment rests upon the trial judge." *Harden*, 1 M.J. at 259. The military judge's responsibility in this area is reinforced by the governing rules and regulations in courts-martial. Those rules require the military judge to discuss the maximum punishment with a criminal defendant prior to a plea and to instruct panel members on the maximum authorized punishment prior to sentencing deliberations. Rule for Courts-Martial (R.C.M.) 1005(e)(1); *see* Dept. of the Army Pamphlet 27-9, *Military Judges' Benchbook*, §§ 2-2-4, 2-5-21, at 27, 80 (Feb. 29, 2020). It was the military judge's responsibility to correct the parties' miscalculation. The military judge recognized this responsibility when he *sua sponte* corrected the parties' maximum punishment calculation for other offenses earlier in the trial. Pet. App. at 99a-100a (military judge correcting trial government and defense counsel's calculation of the maximum available punishment

under Petitioner's guilty plea for other offenses). While criminal defendants rely on their own counsel for representation, the military judge makes the final determination for applicable sentencing ranges. Criminal defendants, like Petitioner, rely upon and are subject to that determination. The military judge's error on its own should preclude waiver due to the judge's unique role in the sentence adjudication process.

When the issue is forfeited, rather than waived, it is subject to plain error review. *Olano*, 507 U.S. at 732; *see Jones*, 78 M.J. at 44. Here, plain error occurred, and it affected Petitioner's substantial rights to fair sentencing proceedings. *Infra* § II.

II. Correct Calculation of a Maximum Sentence Is a Substantial Due Process Right

The CAAF erred in finding that an incorrect maximum punishment calculation does not undermine the fairness of the sentencing process. Unlike Federal civilian criminal courts which have the United States Sentencing Guidelines (Guidelines) *and* statutory ranges to determine an appropriate sentence, courts-martial for offenses from the relevant timeframe only have ranges. When a panel or military judge uses the incorrect range, the only safeguard is gone, and the fairness of the sentence is undermined. In the present case, Petitioner's maximum confinement for the two offenses at issue should have been ten years, rather than fifty,[9] and this error

[9] Federal civilian criminal courts have treated single count (referred to as "specifications" in courts-martial) violations of 8 U.S.C. § 1324 as having a five-year maximum, regardless of the number of aliens included per count. *See United States v. Salazar-Villarreal*, 872 F.2d 121, 121–22 (5th Cir. 1989); *United*

violated a substantial due process right. Therefore, an error occurred, the error was plain, and it affected Petitioner's substantial rights. *Olano*, 507 U.S. at 732.

"A fundamental requirement of due process is that individuals subjected to proceedings by the Government are entitled to the safeguards established in the governing statutes and regulations, and that the Government must follow the prescribed procedures, regardless whether they are constitutionally required." *United States v. McDonald*, 55 M.J. 173, 175 (C.A.A.F. 2001) (citing *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)).

"[S]afeguards established in the applicable Rules for Courts-Martial and Military Rules of Evidence" are fundamental requirements of due process. *Id.* For federal civilian crimes prosecuted under the UCMJ, the maximum punishment is dictated by the federal civilian statute. R.C.M. 1003(c)(1)(B)(ii); *see also* 10 U.S.C. § 856(a) (authorizing the President to prescribe maximum punishments for offenses under the UCMJ). The governing rules and regulations require the military judge to discuss the maximum punishment with a criminal defendant prior to a plea, and—when a defendant elects to be sentenced by a court-martial panel—to instruct panel members on the maximum authorized punishment. R.C.M. 1005(e)(1); *see also* Dept. of the Army Pamphlet 27-9, *Military Judges' Benchbook*, §§ 2-2-4, 2-5-21, at 27, 80 (Feb. 29, 2020).

States v. Hilario-Hilario, 529 F.3d 65, 75 (1st Cir. 2008); *United States v. Ramirez-De Rosas*, 873 F.2d 1177, 1178 (9th Cir. 1989); *see also United States v. Spykerman*, 81 M.J. 709, 732 (N-M. Ct. Crim. App. 2021).

The President's regulations and the applicable federal civilian criminal statute are the safeguards required to ensure due process. *McDonald*, 55 M.J. at 175. Under those statutes and regulations, the military judge is required to inform a criminal defendant and the sentence adjudicator of the applicable maximum sentence. Therefore, the military judge's correct identification of the maximum sentence is a substantial due process right of a criminal defendant.

The CAAF disagreed, incorrectly holding that due process rights are not implicated because an incorrect maximum sentence calculation does not "inherently undermine the fairness of the sentence process." Pet. App. at 16a. The CAAF arrived at its conclusion by relying on nonbinding precedent from the Third Circuit. *Id.* at 14a-16a (citing *United States v. Payano*, 930 F.3d 186 (3d Cir. 2019)).

In *Payano*, the defendant's statutory maximum was incorrectly calculated to be twenty years, instead of the correct ten years under 8 U.S.C. § 1326. *Payano*, 930 F.3d at 191. The defendant was convicted in Federal district court, and therefore subject to the United States Sentencing Guidelines (Guidelines). *Id.* at 190. The defendant was sentenced to four years of confinement, eighteen months above the applicable Guidelines range. *Id.* at 191.

The *Payano* court found that the defendant's substantial due process rights were affected because he was sentenced above the Guidelines range, establishing *actual* prejudice. *Id.* at 196-98. However, the court declined to find a *presumption* of prejudice because of the statutory range error. *Id.* at 193-96; *see Molina-Martinez*, 578 U.S. at 189 (holding that a

Guidelines error creates a rebuttable presumption of prejudice). The court distinguished a presumption of prejudice for a Guidelines error with a presumption of prejudice for a statutory range error. *Id.* In making this distinction, the court found that unlike statutory ranges, the Guidelines ranges are central to the sentencing process and have a "real and pervasive effect upon the ultimate sentence." *Payano*, 930 F.3d at 193. Because the Guidelines provide a narrower scope to sentence through, statutory ranges do not "anchor" a court's discretion and are "too expansive to exert significant influence over the ultimate sentence imposed." *Id.* at 194. Therefore, a criminal defendant is "hard-pressed to argue that a statutory-range error is alone 'sufficient to show a reasonable probability of a different outcome.'" *Id.* (quoting *Molina-Martinez*, 578 U.S. at 198). The same reasoning cannot apply to courts-martial.

The Guidelines do not apply to courts-martial. The military's sentencing parameters, which are similar to the Guidelines and are new as of 2023, apply only in cases in which all findings of guilty are for offenses committed on or after December 28, 2023. *See* Exec. Order No. 14103, 88 Fed. Reg. 50535, § 3 (July 28, 2023); DAFI 51-201, *Administration of Military Justice* (Jan. 24, 2024), ¶ 19.16 ("If convicted of any offense committed on or before 27 December 2023, the accused shall be sentenced in accordance with the R.C.M. in effect prior to 28 December 2023."). The military's sentencing parameters do not apply in Petitioner's case.[10]

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[10] Even if the new military sentencing parameters did apply in Petitioner's case, Petitioner's sentencing range would be ten to sixteen months per offense, far less than the twenty-four months per offense adjudged. *See Manual for Courts-Martial, United*

The only "anchor" for a military judge or panel is the sentencing range. A range is central to the military sentencing process and has a "'real and pervasive effect' upon the ultimate sentence imposed" because it is the only metric-based tool available for sentencing. *Payano*, 930 F.3d at 193. Because the range is the only tool guiding punishment, it "directly affect[s] how a military judge settles upon an appropriate penalty." Pet. App. at 15a.

The CAAF's conclusion that "a statutory maximum calculation does not have the same practical effect in the sentencing process as a Guidelines computation" is simply incorrect as applied to courts-martial. *Id.* at 14a. On the contrary, the practical effect is the same because the range is the most precise sentencing tool available in a court-martial, just as the Guidelines are the most precise sentencing tool available in federal civilian criminal court. Unlike in *Payano*, here "a statutory-range error is alone 'sufficient to show a reasonable probability of a different outcome,'" because it is the lone tool used. *Payano*, 390 F.3d at 194 (quoting *Molina-Martinez*, 578 U.S. at 198).

The fairness of the sentencing process is inherently undermined when the only range guiding punishment is incorrectly calculated. The panel members rely on the military judge to state the correct maximum punishment so they may properly determine a sentence. Military judges rely on the sentencing range themselves when they adjudge a sentence, as the

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States (2024 ed.) (2024 MCM), Appx. 12D ("For offenses under Article 134's 'crimes and offenses not capital' clause, [use] the Federal Sentencing Guideline range for the underlying offense."); U.S. SENT'G GUIDELINES MANUAL §§ 2L1.1.(a)(3), 5A (indicating a level "12" offense for Petitioner's conviction).

military judge did in the present case. When the arbiter of punishment uses a hammer when it is supposed to use a rubber mallet, the impact of the sentence will be "greater than necessary." 10 U.S.C. § 856(c)(1). This is true even if the impact is within the authorized range – the nail would not go as deep with the mallet. When a sentence calculation is plainly and obviously in error, prejudice to a substantial right should be presumed in courts-martial. Therefore, the CAAF was incorrect as a matter of law, and Petitioner could not have waived his substantial right to fair sentencing proceedings under the circumstances.

Neither the AFCCA nor CAAF can "say with complete confidence that the court would have imposed the same sentence regardless of the [erroneous statutory maximum]." *Payano*, 930 F.3d at 198 (quoting *United States v. Currie*, 739 F.3d 960, 966 (7th Cir. 2014)) (alteration in original). The military judge's reasoning for adjudging twenty-four months of confinement is not in the record. However, "against the backdrop of the 'entire record,' there is at least a 'reasonable probability' that the . . . sentence was based on the [Trial] Court's mistaken belief as to the applicable statutory maximum." *Id.* (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004)). The sentence could have been calculated as a percentage of twenty-five years, five months for each alien rounded down to the nearest year, or by another metric. Because the record does not show how the military judge arrived at the adjudged length of confinement, reviewing courts cannot be certain that the incorrect calculation had no effect on the sentence.

If allowed to stand, the CAAF's holding would "seriously affect the fairness, integrity or public reputation of judicial proceedings." *Olano*, 507 U.S. at

736. This Court's review would resolve this issue by answering an important question regarding substantial due process rights in criminal proceedings, protecting criminal defendants from judicial error that exposes them to severe and undeserved punitive exposure.

Respectfully submitted,

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