No. _____

IN THE

Supreme Court of the United States

ROBERT D. SCHNEIDER, *ET AL.*,
Petitioners,

v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In military courts-martial, under 10 U.S.C. § 860c, the Entry of Judgment (EoJ) is the final judgment, marking the end of trial and the beginning of the post-trial process. In the Air Force, a senior attorney who advises commanders prepares a memorandum, called a First Indorsement, to indicate receipt of the EoJ and summarize criminal indexing requirements. This includes indexing for the National Instant Criminal Background Check System (NICS).

The First Indorsement makes a legal determination about whether 18 U.S.C. § 922 applies to the convicted servicemember and effectuates a restriction of their Second Amendment rights. If that legal determination is made in error, the Air Force Court of Criminal Appeals (AFCCA) has statutory authority under Article 66(d)(2), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(d)(2), to provide relief. Despite a clear statute providing authority to the AFCCA, the Court of Appeals of the Armed Forces (CAAF) decided that military courts have no such authority.

The question presented is:

Whether military courts of criminal appeals have authority under 10 U.S.C. §§ 860c and 866(d)(2) to correct an unconstitutional firearms ban annotated after entry of judgment.

PARTIES TO THE PROCEEDING

This Rule 12.4 petition consolidates appeals from thirteen servicemembers convicted by court-martial.

Petitioners are Robert D. Schneider, Ian J.B. Cadavona, Matthew R. Denney, Brian W. Gubicza, Kris A. Hollenback, DeQuayjan D. Jackson, Bradley D. Lampkins, Douglas G. Lara, S'hun R. Maymi, Justin P. Mitton, Austin J. Van Velson, Brandon A. Wood, and Benjamin C. York.

Respondent in petitioners' cases 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 purposes of S. CT. R. 14.1(b)(iii).

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INTRODUCTION

Petitioners are thirteen United States Air Force servicemembers deprived of their Second Amendment right to possess firearms under 18 U.S.C. § 922(g). The AFCCA has authority to provide relief for this unlawful deprivation. But the CAAF determined that correcting the violation is beyond its and the AFCCA's statutory authority and declined to provide any relief.

Since at least 1928, final judgment in military courts-martial is complete when the convening authority or military judge signs a promulgating order or EoJ. *Manual for Courts-Martial*, *United States* (1928 ed.) (1928 MCM), Ch. XVIII, ¶ 87.d. Additional matters prescribed by military regulation to be included in a record of trial have been attached to that promulgating order or EoJ to communicate additional information to the convicted servicemember, victims, administrative military personnel specialists, and criminal indexing authorities. These attachments are not part of the judgment entered into the record.

The Air Force requires that the First Indorsement be included with the EoJ. Part of the First Indorsement is the criminal indexing portion for firearm prohibition. Here, the Government indexed Petitioners for firearms prohibition under 18 U.S.C. § 922(g) due to a felony conviction or receipt of a dishonorable discharge or dismissal. That indexing was erroneous and unlawful.

Under 10 U.S.C. § 866(d)(2), military courts of criminal appeals (CCAs) "may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record." Despite clear statutory language, the CAAF held that CCAs lack authority to provide relief for erroneous indexing. *United States v. Johnson*, 2025 CAAF LEXIS 499 (C.A.A.F. June 24, 2025).

The CAAF's holding in *Johnson* is inconsistent with the text of 10 U.S.C. § 860c and the statutory and regulatory scheme of the UCMJ and Rules for Courts-Martial (R.C.M.s). Furthermore, it prevents servicemembers from seeking appropriate relief for an error that deprives them of their constitutional right to bear arms.

Congress has decided that certain convictions trigger limitations on a defendant's right to bear arms. This limitation is found in 18 U.S.C. § 922(g). There is no historical tradition that justifies the Government's restriction of Petitioners' Second Amendment rights. The Government restricted Petitioners' rights in error in the First Indorsement to the EoJ. CCAs have clear statutory authority to correct this constitutional error. This Court should, therefore, grant review to clarify the meaning of 10 U.S.C. §§ 860c and 866, and overrule *Johnson*.

DECISIONS BELOW

In Petitioner Schneider's case, the AFCCA's decision is unreported. It is available at 2024 CCA LEXIS 288 and reproduced at pages 2a–27a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 605 and reproduced at page 1a.

In Petitioner Cadavona's case, the AFCCA's decision is unreported. It is available at 2025 CCA LEXIS 17 and reproduced at pages 29a–55a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 604 and reprinted in the Appendix at page 28a.

In Petitioner Denney's case, the AFCCA's decision is unreported. It is available at 2024 CCA LEXIS 101 and reproduced at pages 57a–59a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 595 and reproduced at page 56a.

In Petitioner Gubicza's case, the AFCCA's decision is unreported. It is available at 2024 CCA LEXIS 266 and reproduced at pages 61a–63a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 611 and reproduced at page 60a.

In Petitioner Hollenback's case, the AFCCA's decision is unreported. It is available at 2024 CCA LEXIS 323 and reproduced at pages 65a–67a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 581 and reproduced at page 64a.

In Petitioner Jackson's case, the AFCCA's decision is unreported. It is available at 2024 CCA LEXIS 9 and reproduced at pages 69a–87a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 607 and reproduced at page 68a.

In Petitioner Lampkins's case, the AFCCA's decision is unreported. It is available at 2023 CCA LEXIS 465 and reproduced at pages 89a-116a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 596 and reproduced at page 88a.

In Petitioner Lara's case, the AFCCA's decisions are unreported. They are available at 2025 CCA

LEXIS 97, 2023 CCA LEXIS 267, and 2023 CCA LEXIS 160, and reproduced at pages 127a–178a. The CAAF's petition denial is not yet reported. It is available at 2025 CAAF LEXIS 567 and reproduced at page 126a.

In Petitioner Maymi's case, the AFCCA's decision is unreported. It is available at 2023 CCA LEXIS 491 and reproduced at pages 180a–195a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 589 and reproduced at page 179a.

In Petitioner Mitton's case, the AFCCA's decision is unreported. It is available at 2025 CCA LEXIS 270 and reproduced at pages 197a–202a. The CAAF's petition denial is not yet reported. It is available at 2025 CAAF LEXIS 693 and reproduced at page 196a.

In Petitioner Van Velson's case, the AFCCA's decision is unreported. It is available at 2024 CCA LEXIS 283 and reproduced at pages 204a–213a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 612 and reproduced at page 203a.

In Petitioner Wood's case, the AFCCA's decision is unreported. It is available at 2024 CCA LEXIS 334 and reproduced at pages 215a–219a. The CAAF's summary affirmance is not yet reported. It is available at 2025 CAAF LEXIS 603 and reproduced at page 214a.

In Petitioner York's case, the AFCCA's decision is unreported. It is available at 2025 CCA LEXIS 184 and reproduced at pages 221a–269a. The CAAF's petition denial is not yet reported. It is available at 2025 CAAF LEXIS 670 and reproduced at page 220a.

JURISDICTION

As noted above, the CAAF granted discretionary review in all but three Petitioners' cases. All Petitioners who were denied CAAF review filed their petitions after December 22, 2024. On October 7, 2025, the Chief Justice extended the time in which to file a petition for certiorari to December 15, 2025. The Court has jurisdiction over all Petitioners' cases under 28 U.S.C. § 1259(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

In relevant part, 10 U.S.C. § 854 (2018), *Record of Trial*, provides: "(c) Contents of Record.-(1) Except as provided in paragraph (2), the record shall contain such matters as the President may prescribe by regulation."

In relevant part, 10 U.S.C. § 860c(a) (2018), *Entry of judgment*, provides:

> (1) In accordance with rules prescribed by the President, in a general or special court-martial, the military judge shall enter into the record of trial the judgment of the court. The judgment of the court shall consist of the following:
>
> (A) The Statement of Trial Results under section 860 of this title (article 60).

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

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

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

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

> The FBI NICS Operations Center, upon receiving an [Federal Firearm Licensee (FFL)] telephone or electronic dial-up request for a background check, will . . . . Provide the following NICS responses based upon the consolidated NICS search results to the FFL that requested the background check: . . . "Denied" response, when at least one matching record is found in either the NICS Index, NCIC, or III that provides information demonstrating that receipt of a firearm by the prospective transferee would violate 18 U.S.C. 922 or state law.

In relevant part, 10 U.S.C. § 866(d)(2) (2018), *Courts of Criminal Appeals*, provides: "In any case before the Court of Criminal Appeals under subsection (b), the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under section 860c of this title (article 60c)."[1]

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[1] The version of Article 66, UCMJ, as codified in the 2018 edition of United States Code and as amended by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021),

18 U.S.C. §§ 922(g)(1) and (g)(6), state it is unlawful for any person convicted of a felony ((g)(1)) or who has "been discharged from the Armed Forces under dishonorable conditions" ((g)(6)) "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."

In relevant part, R.C.M. 1111,[2] *Entry of judgment*, provides:

> (a) In general.
>
> (1) *Scope*. Under regulations prescribed by the Secretary concerned, the military judge of a general or special court-martial shall enter into the record of trial the judgment of the court. . . .
>
> (2) *Purpose*. The judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders. The entry of judgment terminates the trial proceedings and initiates the appellate process.
>
> . . . .

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and the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 544, 136 Stat. 2395, 2582 (2022), applies in these cases.

[2] R.C.M. 1111 was added to the Manual for Courts-Martial in 2018 to implement Articles 60c and 63, UCMJ, as added by Sections 5324 and 5327 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). R.C.M. 1111 has not been amended since.

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

. . . .

(3) *Additional information.*

. . . .

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

Pertinent text of the following authorities are reproduced in the Appendix: Department of the Air Force Manual (DAFMAN) 71-102, *Air Force Criminal Indexing* (Jul. 21, 2020), Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* (Apr. 14, 2022), DAFI 51-201, *Administration of Military Justice* (Apr. 14, 2022) (incorporating Guidance Memorandum (Sep. 28, 2023)), and DAFI 51-201, *Administration of Military Justice* (Jan. 24, 2024).

STATEMENT OF THE CASE

The CAAF held in *United States v. Johnson* that it and the AFCCA do not have authority to correct an erroneous indexing indication during post-trial processing. *Johnson*, 2025 CAAF LEXIS 499, at *13-14. As a result, numerous Air Force defendants were unconstitutionally deprived of their Second Amendment right to bear arms. Thirteen of those defendants are petitioners here.

Petitioner Robert D. Schneider, a Technical Sergeant (E-6) in the United States Air Force (USAF), was convicted, pursuant to his pleas, of one charge and eight specifications of making a false official

statement in violation of 10 U.S.C. § 907. A military judge sentenced him to be reprimanded, reduced to the grade of E-1, confined for twelve months, and discharged with a bad-conduct discharge. The AFCCA provided neither discussion nor relief on Petitioner Schneider's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Ian J.B. Cadavona, an Airman Basic (E-1) in the USAF, was convicted, contrary to his pleas, of one charge and one specification of possession of child pornography in violation of 10 U.S.C. § 934. A military judge sentenced him to be reprimanded, confined for twenty-one months, and discharged with a dishonorable discharge. The AFCCA provided neither discussion nor relief on Petitioner Cadavona's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Matthew R. Denney, a Master Sergeant (E-7) in the USAF, was convicted, pursuant to his pleas, of one charge and one specification of distribution of child pornography in violation of 10 U.S.C. § 934. A military judge sentenced him to be reprimanded, reduced to the grade of E-4, and confined for twelve months. The AFCCA provided neither discussion nor relief on Petitioner Denney's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Brian W. Gubicza, a Staff Sergeant (E-5) in the USAF, was convicted, pursuant to his pleas, of one charge and one specification of possession of child pornography and one specification of distribution of child pornography in violation of 10 U.S.C. § 934. A military judge sentenced him to be

reprimanded, reduced to the grade of E-1, confined for thirty-six months, and discharged with a dishonorable discharge. The AFCCA provided neither discussion nor relief on Petitioner Gubicza's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Kris A. Hollenback, a Major (O-4) in the USAF, was convicted, pursuant to his pleas, of one charge and one specification of possession of child pornography and one specification of viewing child pornography in violation of 10 U.S.C. § 934. A military judge sentenced him to be confined for three years and dismissed from military service. The AFCCA provided neither discussion nor relief on Petitioner Hollenback's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner DeQuayjan D. Jackson, a Senior Airman (E-4) in the USAF, was convicted, pursuant to her pleas, of one charge and one specification of wrongful distribution of marijuana, one specification of wrongful distribution of cocaine, one specification of wrongful distribution of alprazolam, one specification of wrongfully aiding others' manufacture of cocaine, and one specification of wrongfully aiding others' distribution of cocaine in violation of 10 U.S.C. § 912a and one charge and one specification of failing to obey a lawful general regulation, in violation of 10 U.S.C. § 892. A military judge sentenced her to be reprimanded, reduced to the grade of E-1, confined for three hundred and fifty days, forfeiture of all pay and allowances, and to be discharged with a bad-conduct discharge. The AFCCA provided no relief on Petitioner Jackson's raised issue regarding the 18 U.S.C.

§ 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Bradley D. Lampkins, an Airman First Class (E-3) in the USAF, was convicted, pursuant to his pleas, of one charge and one specification of attempted larceny in violation of 10 U.S.C. § 880; one charge and two specifications of larceny in violation of 10 U.S.C. § 921; and one charge and forty-three specifications of making, drawing, or uttering check, draft, or order without sufficient funds, in violation of 10 U.S.C. § 923. A military judge sentenced him to be reprimanded, reduced to the grade of E-1, confined for forty-six months, and discharged with a dishonorable discharge. At the AFCCA, Petitioner Lampkins filed a motion for leave to raise the 18 U.S.C. § 922 issue, which was denied; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Douglas G. Lara, a Staff Sergeant (E-5) in the USAF, was convicted, pursuant to his pleas, of one charge and one specification of attempting to view child pornography in violation of 10 U.S.C. § 880 and one charge and one specification of willful dereliction of duty in violation of 10 U.S.C. § 892. A military judge sentenced him to be reduced to the grade of E-1, confined for a total of six months, and discharged with a bad-conduct discharge. The AFCCA provided neither discussion nor relief on Petitioner Lara's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF denied his petition.

Petitioner S'hun R. Maymi, a Senior Airman (E-4) in the USAF, was convicted, contrary to his pleas, of one charge and one specification of sexual assault in violation of 10 U.S.C. § 920 and one charge and one specification of unlawful entry in violation of

10 U.S.C. § 929. A military judge sentenced him to be reduced to the grade of E-1, confined for a total of fifteen months, discharged with a dishonorable discharge, and to forfeit of all pay and allowances. The AFCCA provided neither discussion nor relief on Petitioner Maymi's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Justin P. Mitton, a Staff Sergeant (E-5) in the USAF, was convicted, pursuant to his pleas, of one charge and four specifications of abusive sexual contact in violation of 10 U.S.C. § 920. A military judge sentenced him to be reprimanded, reduced to the grade of E-1 (suspended by the convening authority), confined for a total of sixteen months, discharged with a bad-conduct discharge, and to forfeit of all pay and allowances (disapproved by the convening authority). The AFCCA provided neither discussion nor relief on Petitioner Mitton's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF denied his petition.

Petitioner Austin J. Van Velson, a Second Lieutenant (2d Lt) in the USAF, was convicted, pursuant to his pleas, of one charge and one specification of possession of child pornography and one specification of communication of indecent language in violation of 10 U.S.C. § 934. A military judge sentenced him to be confined for twenty-four months and dismissed from military service. The AFCCA provided neither discussion nor relief on Petitioner Van Velson's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Brandon A. Wood, a Senior Airman (E-4) in the USAF, was convicted, pursuant to his

pleas, of one charge and one specification of possession of child pornography in violation of 10 U.S.C. § 934. A military judge sentenced him to be reprimanded, reduced to the grade of E-1, confined for a total of twelve months, and discharged with a dishonorable discharge. The AFCCA provided neither discussion nor relief on Petitioner Wood's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF summarily affirmed in light of *Johnson*.

Petitioner Benjamin C. York, a Captain (O-3) in the USAF, was convicted, contrary to his pleas, of one charge and one specification of abusive sexual contact in violation of 10 U.S.C. § 920 and one charge and one specification of assault upon a commissioned officer in violation of 10 U.S.C. § 928. A military judge sentenced him to be reprimanded, confined for a total of fifteen days, and to forfeit $4,000.00 of pay per month for six months. The AFCCA provided neither discussion nor relief on Petitioner Gubicza's raised issue regarding the 18 U.S.C. § 922 prohibition; the CAAF denied his petition.

REASONS FOR GRANTING THE PETITION

Military Courts of Criminal Appeals (CCAs) have authority under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), to provide relief for errors "in the processing of the court-martial after the judgment was entered into the record." Here, the First Indorsement to the EoJ—processing after judgement is entered into the record—caused Petitioners to be criminally indexed, effectively barring them from possessing firearms. This indexing was error because it violates the Second Amendment.

Because there was an error in the First Indorsement, the CCAs had authority under 10 U.S.C. § 866(d)(2) to provide relief for that error. Despite this plain text interpretation, the CAAF held that military CCAs do not have that authority. The CAAF's decision is antithetical to the plain text of the statute and results in the deprivation of servicemembers' Second Amendment rights. This Court should grant review to clarify the meaning of 10 U.S.C. §§ 860c and 866.

I. Military Courts of Criminal Appeals have the authority under the plain text of 10 U.S.C. § 860c to provide relief for post-trial error, but the Court of Appeals for the Armed Forces held otherwise.

The CAAF incorrectly interpreted Articles 60c and 66(d)(2), UCMJ, 10 U.S.C. §§ 860c, 866(d)(2), stripping military CCAs of their statutory authority to correct errors in post-trial processing. *Johnson*, 2025 CAAF LEXIS 499, at *10-14. In *Johnson*, the CAAF held that the First Indorsement is part of the EoJ, and therefore not "processing of the court-martial after the judgment was entered into the record." *Id.* The CAAF reached this holding for three reasons: (1) 10 U.S.C

§ 860c states that the EoJ includes additional information from the military service Secretary, and the First Indorsement is that additional information; (2) the EoJ is the last piece of the record of trial, the military service Secretary does not have authority to supplement the record of trial, the Secretary's First Indorsement cannot come after the EoJ, therefore they are the same document; and (3) the version of the EoJ that is distributed with the record of trial includes the First Indorsement, so they must be the same. *Id.* The CAAF's reasoning is flawed.

The EoJ "serves to terminate trial proceedings and initiate appellate proceedings" upon signature of the military judge, beginning the post-trial process. Pet. App. at 271a, 286a, 299a. The First Indorsement comes after the EoJ, making it part of the post-trial process. Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), gives CCAs the authority to provide relief for post-trial processing errors. Therefore, the AFCCA can provide relief for an error in the First Indorsement. The CAAF's decision (1) is contrary to the plain text of the applicable statutes, rules, and regulations, (2) conflicts with overall statutory scheme, and (3) is discordant with the history of court-martial judgments.

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

The plain text of 10 U.S.C. § 860c, R.C.M. 1111(b)(3)(F), and Secretary of the Air Force regulations provide that judgment is entered into the record of trial upon the military judge's signature. But the CAAF's holding in *Johnson* delays the entry of judgment until the signature of a Staff Judge Advocate

(SJA)[3], contrary to the plain text of the controlling statutes, rules, and regulations. *Johnson*, 2025 CAAF LEXIS 499, at *12-13. The CAAF decided that the text of the statutes—and applicable regulations—do not mean what they say. This Court should grant review to clarify the meaning of 10 U.S.C. §§ 860c and 866 and safeguard the Second Amendment rights of servicemembers.

The hierarchy of the applicable legal authority is important for understanding the plain meaning of final judgment in courts-martial. Here, Congressional statutes (the UCMJ) confer some authority to the President, the President creates R.C.M.s with that authority and confer some authority to the Secretary of the Air Force, who in turn uses that authority to publish regulations.

Congress enacted 10 U.S.C. § 866(d)(2), *Courts of Criminal Appeals*, authorizing "the service [appellate] courts to correct errors that occur 'after the judgment was entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c(a)].'" *Johnson*, 2025 CAAF LEXIS 499, at *11 (second alteration in original).

Congress enacted 10 U.S.C. § 860c, *Entry of judgment*, providing that "the military judge shall enter into the record of trial the judgment of the court." 10 U.S.C. § 860c(a)(1). The President, pursuant to 10 U.S.C. § 860c(a), prescribes rules for the preparation and distribution of the EoJ. The President has directed that the EoJ "shall consist of . . . [a]ny

[3] A Staff Judge Advocate is an attorney that directly reports to and advises a court-martial convening authority or commander on military justice matters and supervises the administration of military justice for the command and installation to which they are assigned.

additional information that the Secretary concerned may require by regulation." R.C.M. 1111(b)(3)(F)).

Pursuant to R.C.M. 1111(b)(3)(F), the Secretary of the Air Force outlines "additional information" to the EoJ through DAFI 51-201. Under the current version of DAFI 51-201, "The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings." Pet. App. at 299a; *see* Pet. App. at 271a, 286a. The "[m]inimum contents" of the EoJ "must include the contents listed in R.C.M. 1111(b), and the [Statement of Trial Results] must be included as an attachment," that is all. *Id.* The First Indorsement to the EoJ—which indicates whether 18 U.S.C. § 922 restrictions apply—is "sign[ed] and *attach[ed]* to the EoJ" and "distributed *with* the EoJ," indicating that they are separate, distinct documents. *Id.* at 300a (emphasis added); *see id.* at 272a, 287a. After the EoJ is completed, the First Indorsement is attached to it, and they are both included in the record of trial. *See id.* at 313a, 324a.

In sum, Congress passed 10 U.S.C. § 860c, conferring authority to the President to prescribe additional rules for the EoJ. The President further delegated his authority to prescribe additional rules for the EoJ to the Secretary of the Air Force. 10 U.S.C. § 866(d)(2) allows military CCAs to correct errors made after judgment is entered into the record.

"[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Connecticut Nat'l Bank v.*

Germain, 503 U.S. 249, 253-54 (1992) (citations omitted) (internal quotations marks omitted).

The CAAF ignores the unambiguous words of 10 U.S.C. § 860c, R.C.M. 1111(b)(3)(F), and Secretary of the Air Force regulations. The CAAF argues that the plain text conveys that the Secretary of the Air Force's "additional information" from R.C.M. 1111(b)(3)(F) is the First Indorsement, but that is simply incorrect. *Johnson*, 2025 CAAF LEXIS 499, at *12-13.

10 U.S.C. § 860c is clear: "the *military judge* shall enter into the record of trial the judgment of the court," not an SJA. 10 U.S.C. § 860c(a)(1) (emphasis added). The words of DAFI 51-201 are likewise clear: "The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings," not after an SJA indicates indexing requirements. Pet. App. at 299a-300a; *see* Pet App. at 271-72, 286-87. The EoJ itself confirms this reading, stating directly above the military judge's signature: "[t]his judgment reflects the result of the court-martial, as modified by any post-trial actions, rulings, or orders, if any, and is hereby entered into the record on (date)." *Id.* at 321. The First Indorsement is clear in its single sentence: "The following criminal indexing is required, *following* Entry of Judgment." *Id.* at 322a. The First Indorsement *follows* the EoJ and only indicates indexing requirements, it is not judgment entering the record under 10 U.S.C. § 860c.

The statute and regulations mean what they say. 10 U.S.C. § 860c, R.C.M. 1111(b)(3)(F), and Secretary of the Air Force regulations mandate that the military judge's signature enters the judgment into the record,

it does not wait for anyone else. The judicial inquiry ought to stop here, but the CAAF continued its misinterpretation of the statutes, rules, and regulations, positing that the EoJ and First Indorsement are the same, and therefore entry of judgment into the record waits for the First Indorsement.

B. The CAAF's holding conflicts with the overall scheme of the UCMJ, R.C.M.s, and Secretary of the Air Force directives.

The CAAF's holding conflicts with the overall goal of the Uniform Code of Military Justice, to be uniform across the military services. The CAAF arrived at this inconsistent outcome by conflating the contents *included* in the Air Force record of trial with the processing of military courts-martial after judgment is *entered* into the record. Inclusion in the Air Force record of trial is a physical action, placing two documents next to each other in the record of trial and has no effect on the final judgment. Entry of judgment into the record of trial by the military judge is a legal action and is the final judgment itself. They are not the same nor reliant on one another. Nonetheless, the CAAF's reading overlooks this distinction and ignores the overall context of the statutory scheme. The CAAF erred by finding the EoJ and the First Indorsement are the same merely because they appear together in the record of trial.

The military judge's signature must "denote[] some kind of terminal event." *Riley v. Bondi*, 145 S. Ct. 2190, 2211 (2025) (reviewing the statutory definition of "final" for final judicial orders in 8 U.S.C. § 1252(b)(1)). The EoJ should "leave nothing to be looked for or expected and leave no further chance for action, discussion, or change." *Id.* But, the CAAF's

holding leaves a single military service waiting for action, discussion, or change by an SJA *after* a military judge has already entered judgment into the record.

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989) (citing *United States v. Morton*, 467 U.S. 822, 828 (1984)). "That canon carries particular force when construing phrases that govern conceptual relationships . . . whose meanings inherently depend on their surrounding context." *United States v. Miller*, 145 S. Ct. 839, 853 (2025).

The CAAF's reasoning shows they departed from the overall statutory scheme and surrounding context. The CAAF's reasoning departs because they confused the contents of the record of trial and entry of judgment into the record. In *Johnson*, the CAAF wrote: "the final, completed version of the EOJ that included the SJA indorsement and the § 922 indication" is the "judgment entered into the record" under 10 U.S.C. § 860c because it is "the document that was distributed to the accused (and numerous other individuals and offices)." *Johnson*, 2025 CAAF LEXIS 499, at *13. Furthermore, the CAAF stated, "it is not clear what authority—if any—would authorize the SJA to supplement the record of trial with an additional document *after* the entry of the EOJ into the record," therefore, entry of judgment into the record must happen when the First Indorsement is complete. *Id.* at *12.

The *Johnson* court is correct that it is not clear what authority under the UCMJ or R.C.M.s allows the SJA to supplement the record of trial. But the Secretary of the Air Force nonetheless directs the SJA to

supplement the record of trial, with more than just the First Indorsement. Under Article 54, UCMJ, 10 U.S.C. § 854, and through R.C.M. 1112, the President prescribes the contents of the record of trial. However, dissimilar from R.C.M. 1111, the President does not allow the Secretary concerned to add additional information. Still, however, the Secretary of the Air Force mandates the use of a record assembly checklist, which requires several documents to be included in the record in excess of the limited content prescribed by R.C.M. 1112.[4] The *Johnson* court's question is answered: the *Secretary of the Air Force* provides SJAs the authority to supplement the record, albeit without authority granted by Congress or the President. The CAAF's reasoning falsely assumed that the Secretary of the Air Force was acting with authority, and therefore the First Indorsement must be part of the EoJ. On the contrary, the Secretary of the Air Force does not have authority to supplement the record of trial but nonetheless does so with the First Indorsement, a separate, post-trial document.

The overall statutory and regulatory scheme reinforces that the EoJ and First Indorsement are not the same but rather serve distinct legal purposes. Pursuant to R.C.M. 1111, the Secretary of the Air Force dictates, among other things, the contents of the EoJ and First Indorsement. Pet. App. at 271a. The "additional information that the Secretary concerned [(Secretary of the Air Force)] may require by regulation" is *not* the

[4] Pet. App. at 323a-42a (Excess documents include: 22. Completed Excess Leave Mem; 23. Confinement Transfer Documents; 24. DD Form 2707 Confinement Order; 25. AF Form 304 – Request for Appellate Defense Counsel; 26. DD Form 2330 – Waiver/Withdrawal of Appellate Review; 28. Post Sentencing Receipts; 59. G-Series Orders; 7. EoJ w/Indorsement).

First Indorsement; rather, the additional information is included above the military judge's signature in the EoJ itself.

The Secretary of the Air Force's "additional information" is explicitly listed in their regulation, DAFI 51-201: "The template EoJ form contains data required by R.C.M. 1111(b) and additional information required by policy. This additional information includes [social security numbers], rank, and other administrative data that is used to identify the member and carry out various personnel and administrative functions." Pet. App. at 273a; *see* Pet. App. at 288a, 301a. The servicemember's SSN, rank, and other administrative data is clearly listed on the first page of the EoJ, not in the First Indorsement. *Id.* at 320a-22a. The First Indorsement is not included in the Secretary of the Air Force's list of additional information for the EoJ.

The First Indorsement *only* indicates whether certain criminal indexing is required. After the First Indorsement is complete, it is sent to the Department of the Air Force Criminal Justice Information Center (DAF-CJIC) to criminally index the convicted servicemember into NICS, which records the restrictions. *See* Pet. App. at 272a, 274a, 281a-82a, 287a, 289a, 296a-97a, 300a, 302a, 309a-310a, 313a-14a; 28 C.F.R. § 25.6(c). Indexing is not a personnel or administrative function; it is a law enforcement function. The personnel and administrative functions required after a court-martial are coding the convicted servicemember for confinement, forfeited pay, reduced rank, and potential appellate leave status, as informed by the content *above* the military judge's signature. The purpose of the First Indorsement is to effectuate *post-trial processing*; it is not a part of the judgment of the court.

If the Secretary of the Air Force intended to include the 18 U.S.C. § 922 designator in the EoJ, they would have done so. The Secretary of the Air Force expressly dictates the content of the additional information in the EoJ above the military judge's signature by mandating the use of certain templates and checklists and has done so for years. *Id.* at 271a. ("Practitioners must use the format and checklists for the EoJ that is posted on the [Virtual Military Justice Deskbook (VMJD)."); *see id.* at 286a, 299a. Through those templates and checklists, the Secretary of the Air Force specifically delineates between the content of the EoJ and its First Indorsement, and never included the firearms designator above the military judge's signature. *Id.* at 270a-311a; *see id.* 320a-22a. The overall regulatory scheme prescribed by the Secretary of the Air Force is contrary to the CAAF's holding: the EoJ and First Indorsement are not the same; therefore, the First Indorsement is part of post-trial processing.

The overall scheme of the Manual for Courts-Martial (MCM), which is applicable to all military services, also indicates that the EoJ and First Indorsement, a unique Air Force addition, are not the same. The MCM relies on a uniform reading of the date judgment is entered into the record, uniformity that is vitiated if a Secretary of one military service can alter the date at their whim. The date of the EoJ affects the timing of conditions of probation in a plea agreement (R.C.M. 705(c)(2)(D)), the timing of a motion for reconsideration of any ruling (R.C.M. 905(f); R.C.M. 1104(a)(3)), the timing of special findings being entered on the record (R.C.M. 918(b)), the timing of fine liability attaching to an accused (R.C.M. 1003(b)(3)), the timing of sentence clarification (R.C.M. 1005(c)), the timing of correcting the convening authority's

action (R.C.M. 1104(b)(2)(B(ii)), the timing of an accused's waiver of their right to appeal (Article 61(a), UCMJ, 10 U.S.C. § 861(a); R.C.M. 1115(a)), the timing of a request for a new trial (Article 73, UCMJ, 10 U.S.C. § 873; R.C.M. 1210(a)); the timing of appellate review applications to the Judge Advocate General (Article 69, UCMJ, 10 U.S.C. § 869(b)(1)(B)), and the:

> [T]imeliness of Government appeals (Article 56(d)(2), UCMJ, 10 U.S.C. § 856(d)(2) (2018)), timeliness of petitions for a new trial (Article 73, UCMJ, 10 U.S.C. § 873 (2018)), the timeliness of post-trial motions (Article 60(b)(2), UCMJ, 10 U.S.C. § 860(b)(2) (2018)), the timeliness of convening authority action on certain sentences (Article 60a(a)(3), UCMJ, 10 U.S.C. § 860a(a)(3) (2018)), the timeliness of cooperation with law enforcement (Article 60a(d)), the timing of appellate leave (Article 76a, UCMJ, 10 U.S.C. § 876a (2018)), the effective date of 'other sentences' (Article 57(a)(6), UCMJ, 10 U.S.C. § 857(a)(6) (2018)), [and] the deferral of sentences (Article 57[(b)(1)]).

Johnson, 2025 CAAF LEXIS 499, at *16 n.3 (Johnson, J., concurring)).

The CAAF's holding allows the uniform execution of military justice to falter, permitting a single service to alter the application of a significant portion of the MCM. *See id.* at *15-16 (Johnson, J., concurring) ("the Court's decision . . . could potentially set the Air Force and Space Force apart from the other services for

every provision of the UCMJ and the R.C.M. that turns on the timing of the EOJ").[5]

The overall statutory scheme confirms the opposite of the CAAF's holding: the EoJ and First Indorsement cannot be the same. The CAAF confused entry of judgment into the record with the document entered into the record of trial. Merely because the documents are attached to each other in the record of trial and delivered together does not mean that they serve the same purpose or justify deviation from uniform application of military justice. The overall context and scheme of the applicable rules confirm the CAAF was wrong. The First Indorsement has no bearing on when judgment is entered into the record; therefore, the First Indorsement is part of post-trial processing.

C. The CAAF's holding is contrary to the history of court-martial judgments.

History also supports the opposite of the CAAF's holding. The history of court-martial judgments confirms that the signature of the military judge enters judgment, not the SJA. The EoJ replaced promulgating orders through the Military Justice Act of 2016. *See* Article 60c, as added by Section 5324 of the Military Justice Act of 2016, Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016). Since at least 1928, courts-martial judgment has been entered into the record upon signature of the convening authority or military judge. 1928 *MCM*, Ch. XVIII, ¶ 87.d ("The order will be of the date that the reviewing or

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[5] *See also United States v. Freestone*, 2025 CCA LEXIS 388, at *9 (A. Ct. Crim. App. Aug. 13, 2025) (Arguelles, J., dissenting) (Army CCA expressing concern about the CAAF's holding in *Johnson*).

confirming authority takes final action on the case."); *see Manual for Courts-Martial*, *United States* (1949 ed.) (1949 *MCM*), Ch. XVIII, ¶ 87.d ("The order will be of the date that the reviewing or confirming authority takes final action on the case.").

In 1951, the UCMJ took effect, and pursuant to 10 U.S.C. §§ 860, 865, the President required the convening authority to promulgate orders acting as final disposition of a court-martial. *See Manual for Courts-Martial*, *United States* (1951 ed.) (1951 *MCM*), Ch. XVII, ¶ 90.a (establishing promulgating orders that "will bear the date of the action of the convening authority on the record of trial"); *Manual for Courts-Martial*, *United States* (1969 ed.) (1969 *MCM*), Ch. XVII, ¶ 90.a (establishing promulgating orders that "will bear the date of the action of the convening authority on the record of trial"); *Manual for Courts-Martial*, *United States* (2016 ed.) (2016 *MCM*), Appx. 21, Rule 1114 (providing the history of changes to promulgating orders from 1986 to 2016).

The only SJA involvement near the end of trial was to provide advice to the convening authority prior to convening authority signature on the promulgating order. From 1984 to 2016, the UCMJ required the convening authority, prior to signing the promulgating order, to seek the advice of their SJA, and the contents of that advice were required to include matters prescribed by the President. *See* Military Justice Act of 1983, Pub. L. 98-209, § 5(a)(1), 97 Stat. 1395-7 (1983) (introducing SJA advice requirement); National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, § 1706(a)(1), 127 Stat. 960 (2013) (redesignating 10 U.S.C. § 860(d) as (e)); National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114-328, § 5321, 130 Stat. 2924 (2016) (complete rewrite of

10 U.S.C. § 860 due to introduction of EoJ). Historically, the SJA was never given the authority to control the date that judgment was entered into the record; their only involvement is *before* it enters the record by the hand of the convening authority or military judge.

The words of 10 U.S.C. § 860c, "read in their context," "with a view to their place in the overall statutory scheme," and through the lens of history, establish that the military judge's signature enters judgment into the record, nothing else. *Davis*, 489 U.S. at 809. The First Indorsement can only ever come after the military judge's signature. Therefore, it is "processing of the court-martial after the judgment was entered into the record," and, when it contains error, the "[CCA] may provide appropriate relief." 10 U.S.C. § 866(d)(2).

D. Military Courts of Criminal Appeals can provide sentencing relief for erroneous 18 U.S.C. § 922 designations.

On March 31, 2025, the CAAF decided *United States v. Valentin-Andino*, holding, in part, that previous precedent dictating the availability of post-trial error relief had been superseded by Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2). 85 M.J. 361, 366 n.4 (C.A.A.F. 2025). The court in *Valentin-Andino* additionally held that appellants are entitled to sentencing relief, suitable under the facts and circumstances of the case, for post-trial error. *Id.* at 363. Petitioners did not have the opportunity to properly request relief under Article 66(d)(2) because *Valentin-Andino* was decided after Petitioners completed their respective appeals at the AFCCA. Therefore, remand is the appropriate remedy. It would allow Petitioners to

request sentencing relief for the improper post-trial 18 U.S.C. § 922(g) indexing.

II. There was post-trial error because Petitioners were improperly indexed under 18 U.S.C. § 922. This violated their Second Amendment rights.

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

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 24 (2022) (quoting *Konigsberg v. State Bar of Cal.*, 336 U.S. 36, 49 n.10 (1961)).

Petitioners, despite being felons or dishonorably discharged, are individuals protected by the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) ("the Second Amendment right is exercised individually and belongs to *all* Americans"); *see Zherka v. Bondi*, 140 F.4th 68, 77 (2d Cir. 2025) (finding a felon is protected by the Second Amendment); *Range v. United States*, 124 F.4th 218, 228 (3d Cir. 2024) (finding a felon is protected by the Second Amendment); *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024) (finding a felon is protected by the Second Amendment); *see also United States v. Williams*, 113 F.4th 637 (6th Cir. 2024); *United States v. Duarte*, 137 F.4th 743 (9th Cir. 2025); *United States v.*

Jackson, 138 F.4th 1244 (10th Cir. 2025); *but see United States v. Hunt*, 123 F.4th 697 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024); *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025).

Petitioners' conduct—"desire to possess firearms only in a manner that the Second Amendment protects"—is "clearly" conduct regulated by 18 U.S.C. § 922(g)(1) (prohibition applying to felons) and (g)(6) (prohibition applying to dishonorably discharged servicemembers).[6] *Zherka*, 140 F.4th at 76; *Bruen*, 597 U.S. at 32 (explaining that carrying handguns for self-defense is covered conduct); *Range*, 124 F.4th at 228 (explaining that it is an "easy question" to find possessing a hunting rifle and shotgun for self-defense as covered conduct).

"[T]he Constitution presumptively protects that conduct" Petitioners desire to engage in. *Bruen*, 597 U.S. at 24. Therefore, it falls to the Government to prove why lifetime regulation of that conduct "is consistent with the Nation's historical tradition of firearm regulation." *Id.* The Government is unlikely to meet its burden.

This Court recently applied its test from *Bruen* in *United States v. Rahimi*. 602 U.S. 680 (2024). There, this Court allowed disarmament under 18 U.S.C.

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[6] While the Government does not denote which section of 18 U.S.C. § 922(g) applies to each Petitioner in their EoJ (i.e., (g)(1) for felons or (g)(6) for dishonorable discharges), each Petitioner "has been convicted . . . of[] a crime punishable by imprisonment for a term exceeding one year," and Petitioners Cadavona, Gubicza, Hollenback, Lampkins, Maymi, Van Velson, and Wood also received dishonorable discharges or dismissals. 18 U.S.C. § 922(g). None of the other subsections ((g)(2)-(5), (7)-(9) are applicable). *Id.*

§ 922(g)(8), at least temporarily, when there is "a finding that [the defendant] represents a credible threat to [someone else's] physical safety." 18 U.S.C. § 922(g)(8)(C)(i); *Rahimi*, 602 U.S. at 685, 688, 693, 698-99.

Since *Rahimi*, Federal Courts of Appeals are split on how to apply *Bruen* to felons under 18 U.S.C. § 922(g)(1), and neither this Court nor military appellate courts have addressed the issue since. *See Range*, 124 F.4th at 228-31 (applying *Bruen* and *Rahimi* anew to an as-applied challenge, finding 18 U.S.C. 922(g)(1) unlawful); *Diaz*, 116 F.4th at 470-71 (applying *Bruen* and *Rahimi* anew to an as-applied challenge, finding 18 U.S.C. 922(g)(1) unlawful); *Williams*, 113 F.4th at 648-61 (applying *Bruen* and *Rahimi* anew to an as-applied challenge); *Zherka*, 140 F.4th at 77-96 (applying *Bruen* and *Rahimi* anew to an as-applied challenge, but finding all felon-based prohibitions are lawful); *Duarte*, 137 F.4th at 755-62 (applying *Bruen* and *Rahimi* anew to an as-applied challenge, but finding all felon-based prohibitions are lawful); *Hunt*, 123 F.4th at 707 ("no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons"); *Jackson*, 110 F.4th at 1125 ("there is no need for felony-by-felony litigation regarding the constitutionality of § 922(g)(1)"); *Vincent v. Bondi*, 127 F.4th 1263, 1266 (10th Cir. 2025) ("rejected the notion that *Heller* mandates an individualized inquiry concerning felons pursuant to § 922(g)(1)"); *Dubois*, 139 F.4th at 894 (reaffirming circuit precedent affirming felon-based restrictions are presumptively lawful).[7]

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[7] *See also United States v. Jimenez*, 895 F.3d 228, 233 (2d Cir. 2018) (only federal appellate court to consider 18 U.S.C. §

Because the AFCCA and CAAF found they were unable to address this issue, they have not decided how to apply *Bruen* to servicemembers disarmed under 18 U.S.C. § 922(g)(1), (6). However, precedent indicates that these evaluations are fact-specific and require a review of the citizen's entire criminal records, the circumstances of their qualifying conviction, and whether they "represent[] a credible threat to [someone else's] physical safety." *Rahimi*, 602 U.S. at 685; *see Range*, 124 F.4th at 228-31; *Diaz*, 116 F.4th at 470-71; *Williams*, 113 F.4th at 648-61.

Should this Court reverse the CAAF's holding in *Johnson* and remand, the AFCCA will need to review the EoJ's 18 U.S.C. § 922(g) error under *Bruen*'s test for each individual Petitioner. When the AFCCA conducts this fact-specific inquiry as-applied to Petitioners, they are likely to find error and provide relief.

Conclusion

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

922(g)(6)'s dishonorable discharge prohibition post-*Heller*, but is pre-*Bruen*).

Respectfully submitted,

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