No. _____

IN THE

Supreme Court of the United States

JENNESIS V. DOMINGUEZ-GARCIA; CHANSON A. JOHNSON; TAYARI S. VANZANT,

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

SAMANTHA M. CASTANIEN
Counsel of Record
NICOLE J. HERBERS
United States Air Force
Appellate Defense Division
1500 West Perimeter Road
Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770
samantha.castanien.1@us.af.mil

Counsel for Petitioners

QUESTION PRESENTED

In military courts-martial, the Entry of Judgment (EoJ) is the final judgment marking the end of trial and the beginning of the post-trial process. In the Department of the Air Force, a memorandum called a "First Indorsement" memorializes receipt of the EoJ. The First Indorsement summarizes criminal indexing requirements, including indexing for the National Instant Criminal Background Check System (NICS).

On the First Indorsement, one lawyer—a judge advocate—makes a legal determination about whether 18 U.S.C. § 922 applies to a convicted servicemember, thereby effectuating a restriction of that servicemember's 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 this clear statutory authority, the Court of Appeals of the Armed Forces (CAAF) decided that no military appellate court has the authority to correct an erroneous firearm prohibition made during post-trial processing.

The question presented is:

Whether the Air Force Court of Criminal Appeals has authority under 10 U.S.C. § 866(d)(2) to correct an unconstitutional firearms ban annotated after entry of judgment.

PARTIES TO THE PROCEEDING

This Rule 12.4 petition consolidates direct appeals from three servicemembers convicted at special courts-martial. Petitioners are Airman First Class Jennesis V. Dominguez-Garcia, Master Sergeant Chanson A. Johnson, and Staff Sergeant Tayari S. Vanzant. Respondent in each case 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).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes and Constitutional Provisions

Other Authorities

INTRODUCTION

Petitioners are three United States Air Force servicemembers who were convicted of non-domestic violence offenses at special courts-martial (the equivalent of a misdemeanor conviction). Contrary to the plain language of 18 U.S.C. § 922(g)(1) and Air Force regulations, a single lawyer, known as a judge advocate, checked a box on a post-trial document to permanently deprive Petitioners of their Second Amendment rights. The AFCCA has statutory authority to provide relief for this constitutional violation. But the CAAF determined that neither it nor the AFCCA had statutory authority to act on the firearm prohibition and declined to provide relief.

Final judgment in military courts-martial is complete when the military judge signs the EoJ. 10 U.S.C. § 860c; Rule for Courts-Martial (R.C.M.) 1111(a)(2). The Air Force requires that a memo, called a "First Indorsement," be attached to the EoJ. Pet.App. 58a. Part of the First Indorsement is the criminal indexing portion. *Id.* The Government erroneously indexed Petitioners under 18 U.S.C. § 922(g)(1), wrongly believing their convictions at a special court-martial were "punishable" by over a year in jail. But, under 10 U.S.C. § 819(a), no servicemember can be punished by over a year of confinement at a special-court marital, regardless of the offense. The plain language of 18 U.S.C. § 922(g)(1) dictates that none of the Petitioners should be prohibited from owning or purchasing firearms. Pet.App. 60a. Nevertheless, each Petitioner was criminally indexed into NICS because of the erroneous EoJ and First Indorsement. Pet.App. 68a.

Under 10 U.S.C. § 866(d)(2), the AFCCA "may provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record." The Air Force's unique post-trial processing renders the firearm prohibition an "error" that occurs after the entry of judgment for which the AFCCA could provide appropriate relief.

Despite clear statutory language, the CAAF held that the AFCCA lacks authority to provide relief for erroneous indexing. *United States v. Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, 2025 WL 1762856 (C.A.A.F. June 24, 2025).[1] The CAAF's holding is inconsistent with the text of 10 U.S.C. § 860c and the statutory and regulatory scheme of the UCMJ and R.C.M. This Court should grant review to overrule the CAAF's erroneous interpretation of the statute and authorize the AFCCA to restore Petitioners' right to bear arms. *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499 at *10-13.

PETITION FOR A WRIT OF CERTIORARI

Airman First Class (A1C) Jennesis V. Dominguez-Garcia, Master Sergeant (MSgt) Chanson A. Johnson, and Staff Sergeant (SSgt) Tayari S. Vanzant, United States Air Force, respectfully petition for a writ of certiorari to review the decision of the CAAF.

OPINIONS BELOW

In A1C Dominguez-Garcia's case, the AFCCA decisions are unreported. The first decision is available at 2022 CCA LEXIS 582, 2022 WL 7970556,

[1] While Petitioner Chanson Johnson shares the same last name as the appellant in *Johnson*, Petitioner Chanson Johnson is a different servicemember.

and is reproduced at pages 7a-25a. The second decision is available at 2024 CCA LEXIS 218, 2024 WL 2799240, and is reproduced at pages 2a-4a. The CAAF's first decision is published and available at 83 M.J. 172. It is reproduced at page 5a. The CAAF's second decision is pending publication in *West's Military Justice Reporter*. It is available at 2025 CAAF LEXIS 586, 2025 WL 2305221, and reproduced at page 1a.

In MSgt Johnson's case, the AFCCA decision is unpublished. It is available at 2025 CCA LEXIS 12 and is reproduced at pages 27a-29a. The CAAF's decision is pending publication in *West's Military Justice Reporter*. It is available at 2025 CAAF LEXIS 582, 2025 WL 2305419, and reproduced at page 26a.

In SSgt Vanzant's case, the AFCCA decision is published. It is available at 84 M.J. 671 and is reproduced at pages 31a-55a. The CAAF's decision is pending publication in *West's Military Justice Reporter*. It is available at 2025 CAAF LEXIS 830, 2025 WL 3110516, and reproduced at page 30a.

JURISDICTION

Each Petitioner was convicted at a special court-martial. Pet.App. 2a, 27a, 31a. The AFCCA had jurisdiction to review each of Petitioner's cases pursuant to either 10 U.S.C. §§ 866(b)(1)(A)[2] or (b)(3). The CAAF had jurisdiction pursuant to 10 U.S.C. § 867(a)(3).

---

[2] As amended by the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021) and the James M. Inhofe NDAA for Fiscal Year 2023, Pub. L. No. 117-263, § 544, 136 Stat. 2395, 2582 (2022).

In A1C Dominguez-Garcia's case, the CAAF issued its decision on July 22, 2025. The Chief Justice extended the time for filing a petition for writ of certiorari to, and including, December 19, 2025. In MSgt Johnson's case, the CAAF also issued its decision on July 22, 2025. The Chief Justice also extended the time for filing a petition for writ of certiorari to, and including, December 19, 2025. In SSgt Vanzant's case, CAAF issued its decision on October 1, 2025. No extension request was filed in SSgt Vanzant's case. For all cases, this Court has jurisdiction 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. § 819(a) provides: "Special courts-martial may . . . adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year . . . ."

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)(1) 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 . . .

(A) "Proceed" response, if no disqualifying information was found in the NICS Index . . . .

. . . .

(C) "Denied" response, when at least one matching record is found in . . . the NICS Index . . . that provides information demonstrating that receipt of a firearm . . . would violate 18 U.S.C. 922 . . . .

In relevant part, 10 U.S.C. § 866(d)(2) (2018), 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)."[3]

In relevant part, 18 U.S.C. § 922(g)(1) states that it is unlawful for any person "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to . . . 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, *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.
>
> . . . .

[3] As codified in the 2018 edition of United States Code and as amended by the William M. (Mac) Thornberry NDAA for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021), and the James M. Inhofe NDAA for Fiscal Year 2023, Pub. L. No. 117-263, § 544, 136 Stat. 2395, 2582 (2022).

> (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* (July 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

Each Petitioner was convicted at a special court-martial; none were convicted of domestic violence. Pet.App. 7a-25a, 28a, 34a. The maximum confinement at a special court-martial is one year. 10 U.S.C. § 819(a). Furthermore, a dishonorable discharge is not authorized. *Id*. Nevertheless, the Department of the Air Force (Air Force) reported each Petitioner for indexing under 18 U.S.C. § 922 after the military judge signed their respective EoJs. Pet.App. 4a, 28a, 32a-33a; *see also* Pet.App. 106a-108a (showing an example EoJ and First Indorsement).

Petitioners challenged the firearm prohibitions in their cases, arguing 18 U.S.C. § 922(g) could not permanently deprive them of their Second Amendment rights. Pet.App. 4a, 28a, 32a-33a. During each appeal, the Government asserted that 18 U.S.C. § 922(g)(1) applied to Petitioners because their offenses, if taken to a general court-martial, could have been punishable by over a year in confinement. Ans. to Assignment of Error at 3-5, *United States v. Dominguez-Garcia*, No. ACM S32694 (f rev), 2024 CCA LEXIS 218 (A.F. Ct. Crim. App. May 31, 2024) (per curiam); U.S. Ans. to Assignments of Error at 7, *United States v. Johnson*, No. ACM S32782, 2025 CCA LEXIS 12 (A.F. Ct. Crim. App. Jan. 16, 2025) (per curiam); U.S. Ans. to Assignments of Error at 2-3, 6, *United States v. Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024).

A. A1C Dominguez-Garcia's Firearm Prohibition

A1C Dominguez-Garcia pleaded guilty at a special court-martial for pointing an unloaded firearm at a friend on a military installation. Pet.App. 9a-12a. In her initial post-trial processing paperwork, she was not indexed because no firearm prohibition was indicated. First Indorsement, EoJ, Apr. 30, 2021. According to the Air Force's own regulations, this was correct. Pet.App. 60a-61a, 75a-76a, 89a. The prohibition under 18 U.S.C. § 922(g)(1) does "not apply to convictions in a special court-martial because confinement for more than one year cannot be adjudged in that forum." *Id.*

During her first appeal to the AFCCA, A1C Dominguez-Garcia challenged whether her guilty plea was lawful. Pet.App. 13a-14a. While finding that her

guilty plea was lawful, the AFCCA determined a new sentencing hearing was necessary and her case was remanded. Pet.App. 14a-15a, 25a. However, a rehearing did not occur, and A1C Dominguez-Garica received a sentence of "no punishment." Pet.App. 3a.

During the second post-trial process, the Air Force reported A1C Dominguez-Garcia should be indexed under 18 U.S.C. § 922. First Indorsement, EoJ, Sep. 14, 2023. Nothing had changed about her convictions, and, now, she had no sentence. Pet.App. 3a-4a. But a single judge advocate decided that A1C Dominguez-Garcia should be prohibited from possessing firearms and indicated so on the First Indorsement. First Indorsement, EoJ, Sep. 14, 2023.

A1C Dominguez-Garcia challenged whether she was lawfully indexed and constitutionally deprived of her right to bear arms before the AFCCA, which rejected the challenge as being "beyond [the AFCCA's] authority to review." Pet.App. 4a.

B. MSgt Johnson's Firearm Prohibition

MSgt Johnson was prosecuted at a special court-martial for drug use. Pet.App. 28a. The Air Force reported he should be indexed under 18 U.S.C. § 922. First Indorsement, EoJ, Apr. 29, 2024. At that time, the Air Force did not identify which subsection of 18 U.S.C. § 922(g) applied. First Indorsement, EoJ, Apr. 29, 2024.

On appeal to the AFCCA, MSgt Johnson asserted that any firearm prohibition, whether under 18 U.S.C. § 922(g)(1) or (g)(3), was invalid as applied to him. Br. on Behalf of Appellant at 7-10, *United States v. Johnson*, No. ACM S32782, 2025 CCA LEXIS 12 (A.F. Ct. Crim. App. Jan. 16, 2025) (per curiam). Only then did the Government state "Regardless of whether 18

U.S.C. § 922(g)(1) applied to Appellant's case, 18 U.S.C. § 922(g)(3) applied . . . ." U.S. Ans. to Assignments of Error at 7, *Johnson*, No. ACM S32782, 2025 CCA LEXIS 12.

The AFCCA rejected MSgt Johnson's challenge to the firearm prohibition. Pet.App. 28a-29a.

C. SSgt Vanzant's Firearm Prohibition

SSgt Vanzant's case is similar to MSgt Johnson's. SSgt Vanzant was convicted of drug use at a special-court martial. Pet.App. 32a. Following his conviction, the Air Force indexed him under 18 U.S.C. § 922. Pet.App. 51a. As with MSgt Johnson, the Air Force did not indicate which subsection applied to SSgt Vanzant. *Id.* It was only on appeal to the AFCCA, when SSgt Vanzant challenged the firearm prohibition as unconstitutional, that the Government asserted he was barred under 18 U.S.C. § 922(g)(1). U.S. Ans. to Assignments of Error at 2-3, 6, *Vanzant*, 84 M.J. 671.

The AFCCA rejected SSgt Vanzant's challenge to the firearm prohibition finding the "firearms prohibition remains a collateral consequence of the conviction, rather than an element of the findings or sentence, and is therefore beyond our authority to review." Pet.App. 53a.

D. Petitioners' Appeals to the CAAF

All three Petitioners appealed to the CAAF. *See* Pet.App. 1a, 26a, 30a (showing each case was granted). The CAAF granted review of all three cases, which became trailers to another appellant's case: Specialist 3 Devin W. Johnson, United States Space Force. *See id.* (declining to grant relief "in view of *United States v. Johnson*, __ M.J. __ (C.A.A.F. 2025").

In *Johnson,* the CAAF identified two issues for briefing: whether military courts had the authority to direct modification of the First Indorsement to the EoJ and whether Specialist 3 Johnson had standing to challenge the firearm prohibition. *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *7-8. The CAAF resolved only the first issue, finding that neither it nor the AFCCA had authority to act on the EoJ. *Id*. at *8.

After granting all three of Petitioners' cases on the firearm prohibition issue, the CAAF denied Petitioners any form of relief on their unconstitutional firearm prohibitions, citing *Johnson*. Pet.App. 1a, 26a, 30a; *see Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499 at *10-13.

REASONS FOR GRANTING THE PETITION

The First Indorsement indexed Petitioners in NICS, barring them from possessing firearms. This was error because it violates the Second Amendment, applicable statutes, and Air Force regulations.

Because there was an error in the First Indorsement, which occurred after the entry of judgment by the military judge, the AFCCA had authority under Article 66(d)(2), UCMJ, to provide relief for that error. Despite the plain text, the CAAF held that the AFCCA did 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. § 866(d)(2) and explain that the CAAF's interpretation is inconsistent with the statute's language and context.

I. The CAAF misinterpreted the plain language of Articles 60c and 66(d)(2), UCMJ, the R.C.M., and Air Force regulations to find that the AFCCA did not have authority to correct the firearm prohibition.

The CAAF incorrectly interpreted Articles 60c and 66(d)(2), UCMJ, stripping the AFCCA of its statutory authority to correct errors in post-trial processing. The EoJ ends the court-martial and begins the post-trial process. 10 U.S.C. § 860c; R.C.M. 1111(a)(2). The First Indorsement—which indexed Petitioners—comes after the EoJ, making it part of the post-trial process. Pet.App. 58a, 73a, 86a. Article 66(d)(2), UCMJ, authorizes the AFCCA to provide relief for post-trial errors. Therefore, the AFCCA can provide relief for an error in the First Indorsement. The CAAF's contrary conclusion misconstrues the plain text of applicable statutes, rules, and regulations, and conflicts with the overall statutory scheme.

A. The CAAF's decision in *Johnson* misreads the plain text of the statute and singles out the Air Force for unique treatment under the UCMJ.

The CAAF assessed whether it or the AFCCA had jurisdiction to review the firearm prohibition in the First Indorsement. *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499. It found that neither court had jurisdiction. *Id.* at *2. The CAAF determined that the firearm prohibition fell outside of the CAAF's jurisdiction because the firearm indexing was "not part of the findings or sentence," a term of art. *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *9-10; *see United States v. Williams*, 85 M.J. 121, 125-26 (C.A.A.F. 2024) (analyzing "findings"

and "sentence" as "terms of art"). But Specialist 3 Johnson argued that regardless of whether the CAAF had jurisdiction, the AFCCA had independent jurisdiction based on the plain language of Article 66(d)(2). *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *10; *compare* 10 U.S.C. § 866(d)(1)(A) (limiting the AFCCA's jurisdiction to acting upon the "findings and sentence" entered into the record), *with* 10 U.S.C. § 866(d)(2) (authorizing the AFCCA to correct errors 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). Here, the statute is clear. Article 66(d)(2), UCMJ, provides the AFCCA with the authority to "provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record under section 860c." 10 U.S.C. § 866(d)(2). "Section 860c" refers to Article 60c, UCMJ, which provides that "the military judge shall enter into the record of trial the judgment of the court." 10 U.S.C. § 860c(a)(1). The text of Articles 60c and 66(d)(2), UCMJ, is unambiguous: after the military judge signs the EoJ, any post-trial error thereafter would fall into the AFCCA's "error-correction" jurisdiction under 10 U.S.C. § 866(d)(2). Since the First Indorsement is completed and attached to the record after the military judge signs the EoJ, the plain text of the statute dictates the AFCCA had jurisdiction. *See* Pet.App. 58a, 73a, 86a

(showing that "after the EoJ is signed by the military judge," the First Indorsement is signed and attached).

But the CAAF rejected this interpretation because it found that the "entry of judgment" included the "First Indorsement." *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *11-12. This meant that the First Indorsement was part of the judgment and, therefore, did not occur "after," during post-trial processing. But this holding is confusing and violates the canons of statutory interpretation. The CAAF's decision means that a *judge advocate* signing the First Indorsement "enters judgment," instead of a *military judge*, contrary to the text of Article 60c, UCMJ. *Id.* at *11-13.

Consistent with the statutory text, the concurrence correctly determined entry of judgment occurs when the *military judge* signs the EoJ, not when a judge advocate signs the First Indorsement. *Id.* at *15 (Johnson, J., concurring in part and in the judgment). The concurrence noted that the "military judge makes any final 'ruling, order or other determination' under Article 60c(a)(1)(B)(ii)." *Id.* This is the "entry of judgment," as referred to under 10 U.S.C. § 866(d)(2). "Then, R.C.M. 1111(b) requires that the judgment of the court be 'signed and dated by the military judge.'" *Id.* The concurrence emphasized that "[t]his is important because Article 60c(a)(1), UCMJ, requires that 'the *military judge* shall enter into the record of trial the judgment of the court.' Therefore, the judgment is entered into the record when the military judge signs it." *Id.*

The concurrence pointed out the pitfalls of the majority's logic, noting that "[t]he determination of when the EoJ is entered into the record is not just an

academic exercise," but has real world consequences. *Id.* at *15. Citing multiple statutory and R.C.M. provisions, the concurrence highlighted how entry of judgment effects numerous actions in the military justice system. *Id.* at *14-16. If this "date-certain" event can be manipulated by a judge advocate after the military judge signs a document, then that would affect these other actions, rendering the "uniform" code different for the Air Force than any other service. *Id.* at *15.

By eliminating the uniform application of the Uniform Code of Military Justice, the CAAF violated another "fundamental canon of statutory construction:" "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). Under the majority's approach, the Air Force has someone other than the military judge enter judgment. The military judge's signature is no longer "some kind of terminal event" that "leave[s] nothing to be looked for or expected and leave[s] no further chance for action, discussion, or change." *Riley v. Bondi*, 145 S. Ct. 2190, 2211 (2025) (cleaned up) (reviewing the statutory definition of "final" for final judicial orders in 8 U.S.C. § 1252(b)(1)). Rather, the CAAF's holding leaves a single military service waiting for action, discussion, or change by a judge advocate *after* a military judge has already entered judgment into the record. The Air Force is now uniquely situated from the other services in all matters that turn on the timing of the EoJ, contrary to the overall purpose of the UCMJ. This is inconsistent with the statute's text and the overall statutory scheme.

B. The CAAF's holding is contrary to the plain text of the controlling rules and Air Force regulations.

The concurring opinion in *Johnson* accurately interpreted the plain language of the statute to find that "[t]here is a basis in the text of Article 60c and the R.C.M. to equate the military judge's signature with entering the judgment of the court into the record." *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *15 (Johnson, J., concurring in part and in the judgment). The Air Force's regulations, issued pursuant to the Secretary of the Air Force's authority under the R.C.M., further support this textualist interpretation.

The President, pursuant to Article 60c(a), UCMJ, prescribes rules for the preparation and distribution of the EoJ. The President has directed that "the EOJ '*shall consist of*'—among other things—'[a]ny additional information that the Secretary concerned may require by regulation.'" *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *11-12 (citing R.C.M. 1111(b)(3)(F)) (alteration in original).

Pursuant to R.C.M. 1111(b)(3)(F), the Secretary of the Air Force outlines the "additional information" to the EoJ through Department of the Air Force Instruction (DAFI) 51-201. *See, e.g.*, Pet.App. 56a-59a (outlining the processing requirements). Under the applicable versions of DAFI 51-201, "[t]he 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. 57a, 72a, 85a. 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." Pet.App. 57a, 72a, 85a. Notably, the "additional information that the Secretary concerned may require by regulation" does not include the First Indorsement. Pet.App. at 59a, 74a, 87a.

This makes sense considering the contents and purpose of the First Indorsement. The First Indorsement only indicates whether certain criminal indexing is required. Pet.App. 58a, 73a, 86a. 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. Pet.App 67a-68a, 82a-83a, 96a, 100a. Indexing is not a "personnel or administrative function," but a law enforcement function that occurs "after all post-trial actions, rulings, or orders," and the termination of trial proceedings. Pet.App. 57a. Thus, the purpose of the First Indorsement is to effectuate post-trial processing and does not operate as part of the judgment of the court. *See Williams*, 85 M.J. at 126 (holding criminal indexing is not part of the "findings" or "sentence" entered into the record under Article 60c, UCMJ).

If the Secretary of the Air Force intended to include the 18 U.S.C. § 922 designator *in* the EoJ, they could have done so. *See, e.g.*, *id.* at 122-23 (explaining how the Army does its indexing before the entry of judgment).[4] Instead, the Secretary of the Air

[4] The Air Force is the only service that accomplishes its firearm prohibition reporting this way; the other services complete criminal indexing prior to the military judge signing the EoJ. *See, e.g.*, *id.* at 122 (describing how in the Army, the military judge

Force specifically delineated the EoJ from the First Indorsement, making them distinct. Pet.App. 58a (showing the First Indorsement is "sign[ed] and *attach[ed]* to the EoJ" and "distributed *with* the EoJ"); *see also* Pet.App. 73a, 86a (showing other versions of the DAFI with the same language). 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.

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)." Pet.App. 107a. Moreover, the First Indorsement is clear in its single sentence: "The following criminal indexing is required, *following* Entry of Judgment." Pet.App. 108a (emphasis added). The First Indorsement "follows," "accompanies," and "attaches to" the EoJ; it is not the entry of judgment under Article 60c, UCMJ.

In holding otherwise, the CAAF read the Air Force's regulations in a way that further undermines uniformity in the UCMJ. *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *16 n.3 (Johnson, J., concurring in part and in the judgment). Under the CAAF's reading of the regulations, the Secretary of the Air Force can alter the application of the MCM, which allows the uniform execution of military justice to falter. *Id.* at *15-16 ("[T]he Court's decision . . . could potentially set the Air Force and Space Force apart from the other services for every provision of the

---

makes the firearm prohibition determination before entering the judgment into the record).

UCMJ and the R.C.M. that turns on the timing of the EOJ."). This "fractur[es] the very uniformity the [UCMJ] sought to create." *Id.* at *16.

The CAAF arrived at this inconsistent outcome by confusing the contents *included* in the Air Force record of trial with the processing of military courts-martial after judgment is *entered* into the record. To support its conclusion the CAAF said any other interpretation would not make clear "what authority—if any—would authorize [a judge advocate] to supplement the record of trial with an additional document *after* the entry of the EOJ into the record." *Id.* at *12. While the CAAF is correct that it is not clear what authority allows a judge advocate to supplement the record of trial, hierarchy of laws dictates that the statute and R.C.M. trump the DAFI. But rather than finding the Air Force's regulations unlawful, the CAAF equated the First Indorsement to the entry of judgment, contrary to the overall statutory and regulatory scheme.

The statute, canons of constructions, and overall regulatory scheme confirm the opposite of CAAF's holding: the EoJ and First Indorsement cannot be the same. The CAAF confused entry of judgment into the record with the document included in the record of trial. Merely because the documents are attached to each other does not mean that they are legally interchangeable, serve the same purpose, or justify deviation from uniform application of military justice. The overall context and scheme of the applicable statutes, rules, and regulations confirm the CAAF was wrong; the First Indorsement has no bearing on when judgment is entered into the record.

C. The CAAF's conclusion eliminated possible relief under Article 66(d)(2), UCMJ.

By transforming the First Indorsement into the "additional information" from R.C.M. 1111(b)(3)(F), the CAAF twisted the plain language of the statute to avoid error-correction in straightforward cases like Petitioners'. *Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *12-13. Under the plain language of 10 U.S.C. § 866(d)(2), the AFCCA would have been able to address this post-trial processing error.

Article 66(d)(2), UCMJ, authorizes "the service 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*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, at *11 (alteration in original). The First Indorsement occurs after the military judge signs the entry of judgment under Article 60c, UCMJ, thus falling into the plain jurisdictional authority of Article 66(d)(2), UCMJ. *See id.* at *15 n.1 (Johnson, J., concurring in part and in the judgment) (discussing the "civilian analogue," FED. R. CRIM. P. 32(k)(1), which Article 60c, UCMJ, was modeled upon, to show it is the *judge's signature* that enters the EoJ into the record).

Due to the Air Force's unique post-trial processing requirements, the AFCCA could provide relief to Petitioners under Article 66(d)(2), UCMJ. The AFCCA could review the unconstitutional firearm prohibition and order a correction of the record of trial. *See* R.C.M. 1112(d)(2) (permitting "a superior competent authority to return a record of trial to the military judge for correction"); *cf.* FED. R. CRIM. P. 36

(authorizing a court to correct a "clerical error" in the record). The CAAF's holding in *Johnson*, though, barred this resolution.

II. 18 U.S.C. § 922(g)(1) on its face and by regulation does not apply to Petitioners. Any indexing of Petitioners in the First Indorsement is error.

Petitioners were unconstitutionally denied their fundamental rights to bear arms. U.S. CONST. amend. II. Each Petitioner's First Indorsement reflected that they should be indexed in NICS under 18 U.S.C. § 922. None of the First Indorsements indicate which section of 18 U.S.C. § 922 apply to them, but the Government averred, on appeal, that Petitioners have qualifying convictions under subsection (g)(1). Ans. to Assignment of Error at 3-5, *Dominguez-Garcia*, No. ACM S32694 (f rev), 2024 CCA LEXIS 218; U.S. Ans. to Assignments of Error at 7, *Johnson*, No. ACM S32782, 2025 CCA LEXIS 12; U.S. Ans. to Assignments of Error at 2-3, 6, *Vanzant*, 84 M.J. 671.

This is wrong. Petitioners' convictions do not fall under 18 U.S.C. § 922(g)(1) because Petitioners were not "convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." The definition of a "[c]rime punishable by imprisonment for a term exceeding 1 year" is any offense "for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year." 27 C.F.R. 478.11. This definition is predicated on the meaning of "punishable," i.e., whether the crime can be punished in excess of a year. *See United States v. Briggs*, 592 U.S. 69, 72 (2020) (first citing 12 OXFORD ENGLISH DICTIONARY 845 (2d ed. 1989) ("Liable to punishment; capable of being punished. . .

. . Of an offence: Entailing punishment"); then citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1843 (1986) ("[D]eserving of, or liable to, punishment: capable of being punished by law or right."); then citing BLACK'S LAW DICTIONARY 1110 (5th ed. 1979) ("Deserving of or capable or liable to punishment; capable of being punished by law or right"); and then citing Random House Dictionary of the English Language 1165 (1966) ("liable to or deserving punishment")) (analyzing the meaning of "punishable" in context of the UCMJ).

Petitioners were convicted at special courts-martial. The jurisdictional maximum for confinement at a special court-martial for any offense is one year. 10 U.S.C. § 819(a). Thus, it is impossible to impose over one year of confinement. *Id*. Therefore, 18 U.S.C. § 922(g)(1) does not apply when considering the particular context and provisions of the UCMJ. *See Briggs*, 592 U.S. at 72-78 (assessing the meaning of "punishable by death" in the context of the UCMJ).

Air Force regulations also provide that 18 U.S.C. § 922(g)(1) does not apply to non-domestic-violence, special court-martial convictions, contrary to the Government's position. The Air Force indexes servicemembers convicted at *general* courts-martial for crimes with "maximum punishments" of over a year of confinement, whether or not "adjudged or approved." Pet.App. 60a-61a, 75a-76a (referencing 18 U.S.C. § 922(g) and 27 C.F.R. 478.11). But then the Air Force regulation notes, "This category of prohibition would *not* apply to convictions in a *special* court-martial because confinement for more than one year *cannot* be adjudged in that forum." Pet.App. 60a-61a, 75a-76a (emphasis added). The Air Force's

interpretation is repeated in its criminal indexing regulation as well. Pet.App. 89a.

Here, at minimum, the Government failed to follow its own directives when it completed the First Indorsement.[5] This determination was in violation of statute, Air Force regulations, and case law.

The Army Court of Criminal Appeals (ACCA) and the Navy-Marine Corps Court of Criminal Appeals agree that the jurisdictional limits of a special court-martial prevent application of 18 U.S.C. § 922(g)(1). *United States v. Macias*, No. 202200005, 2022 CCA LEXIS 580, at *2 (N-M. Ct. Crim. App. Oct. 13, 2022); *see United States v. Williams*, ARMY 20230048, 2023 CCA LEXIS 377 (A. Ct. Crim. App. Aug. 30, 2023) (modifying the firearm prohibition to be correct under 18 U.S.C. § 922), *vacated*, 85 M.J. 121 (holding the firearm prohibition was not part of the findings and the sentence that the lower court could act upon under 10 U.S.C. § 866(d)(1)); *United States v. Moreldelossantos*, ARMY 20210167, 2022 CCA LEXIS 164, at *1 (A. Ct. Crim. App. Mar. 17, 2022); *United States v. Shaffer*, ARMY 20200551, 2021 CCA LEXIS 682, at *1 n.2 (A. Ct. Crim. App. Dec. 15, 2021).

This Court has not answered the question of whether military members who are convicted at special courts-martial can be prosecuted under 18 U.S.C. § 922(g)(1) for possessing a firearm or whether 18 U.S.C. § 922(g)(1) could lawfully apply to them if

[5] For MSgt Johnson and SSgt Vanzant, they may have originally qualified under subsection (g)(3) due to their drug convictions, although this is subject to challenge. *See* Pet.App. 61a (indexing servicemembers who have been convicted of a drug offense within the past year); *United States v. Hemani*, No. 24-1234, 2025 U.S. LEXIS 4005 (Oct. 20, 2025).

they were. But the plain language of the statute dictates the answer is no, just as the plain language 10 U.S.C. § 866(d)(2) should allow the CCAs to correct any erroneous determination to the contrary. This Court should grant review to answer these important questions.

III. Correcting the First Indorsement would restore Petitioners' Second Amendment rights.

Correcting the First Indorsement would redress the constitutional deprivation of rights caused by the erroneous indexing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (outlining the requirements for standing: injury, causation, redressability). As the Air Force regulations state: "Reporting of persons qualifying for NICS prohibition is an immediate denial of the individual's right to exercise his or her constitutional right to possess a firearm." Pet.App. 99a-100a. The injury is Petitioners' loss of Second Amendment rights. The cause is due to the Air Force's indexing on the First Indorsement. And the remedy is "appropriate relief" for this post-entry-of-judgment error. 10 U.S.C. § 866(d)(2).

If Petitioners want to purchase a firearm, a seller must run an NICS background check. 18 U.S.C. §§ 922(s), (t)(1)(A). NICS determines whether the seller may proceed with the transaction. 28 C.F.R. § 25.6(c). As relevant here, a "proceed" response will occur if no disqualifying information is found in the NICS. 28 C.F.R. § 25.6(c)(1)(iv)(A). Because sellers must run an NICS background check before lawfully transferring a firearm, erroneous reporting during the

Air Force post-trial processing deprives an individual of their right to bear arms.[6]

Here, the DAF-CJIC is responsible for Air Force criminal indexing. Pet.App. 100a. DAF-CJIC oversees all Air Force NICS entries and removals. *Id.* To effectuate reporting, the firearm prohibition is noted on the First Indorsement to the EoJ which is distributed to "DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §§ 921-922 is appropriately handled." Pet.App. 67a, 82a. By indexing Petitioners under 18 U.S.C. § 922, the Air Force entered Petitioners into NICS. Any attempt to obtain a firearm would trigger the required background check and a denial of Petitioners' rights.

Relief under 10 U.S.C. § 866(d)(2) is available to Petitioners. This is because the error—the erroneous indexing—happened after entry of judgement. 10 U.S.C. § 866(d)(2). Correcting the First Indorsement would resolve the firearm prohibition because the Air Force transmits "[a]ny actions taken as the result of appellate review . . . to DAF-CJIC." Pet.App. 100a. Thus, any amended First Indorsement would be transmitted to NICS. Removal from NICS would then restore Petitioners' ability to possess firearms.

CONCLUSION

The CAAF's holding in *Johnson* prevents the AFCCA from correcting errors in post-trial processing which, for Petitioners, unconstitutionally deprives

---

[6] Petitioners do not have to expose themselves to criminal liability before challenging this error. *See Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 298 (1979) (noting that a plaintiff "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief") (quoting *Doe v. Bolton*, 410 U.S. 179, 188 (1973)).

them of their right to bear arms. The CAAF's holding misunderstands the plain text of 10 U.S.C. §§ 860c and 866(d)(2) and the relevant rules and regulations. The CAAF's holding conflicts with the overall statutory and regulatory scheme that relies on a uniform application of entry of judgment in courts-martial. The AFCCA has the power and authority to correct Petitioners' records and ensure constitutional post-trial processing. Therefore, this Court should reverse the CAAF's holding in *Johnson* and remand these cases to the AFCCA to provide appropriate relief through correction of the First Indorsement.

Respectfully submitted,

SAMANTHA M. CASTANIEN
Counsel of Record
NICOLE J. HERBERS
United States Air Force
Appellate Defense Division
1500 West Perimeter Road
Suite 1100
Joint Base Andrews, MD 20762
(240) 612-4770
samantha.castanien.1@us.af.mil

Counsel for Petitioners