No. _____

IN THE

Supreme Court of the United States

ZHUO H. ZHONG,
Petitioner,

v.

UNITED STATES OF AMERICA,
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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QUESTIONS PRESENTED

1. In 2021, Congress added a new subsection to Article 67(c), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 867(c). The new language incorporated factual sufficiency review into the portion of the statute pertaining to the review authority of the United States Court of Appeals for the Armed Forces (CAAF). In *United States v. Csiti*, 85 M.J. 414 (C.A.A.F. 2025), the CAAF concluded that the new language did not allow it to conduct factual sufficiency review.

The first question presented is:

Whether the United States Court of Appeals for the Armed Forces has statutory authority to hold that a conviction is factually insufficient under 10 U.S.C. § 867(c)(1)(C).

2. In courts-martial, the entry of judgment (EOJ) under 10 U.S.C. § 860c is the final judgment, marking the beginning of the post-trial process. In the Air Force, a First Indorsement memorandum summarizes criminal indexing requirements. It reflects a legal determination about whether 18 U.S.C. § 922 applies to the convicted servicemember and effectuates a restriction of their Second Amendment rights. Despite statutory authority under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), to correct post-judgment processing errors, the CAAF decided that military courts cannot correct indicated firearms prohibitions.

The second 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

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

CORPORATE DISCLOSURE STATEMENT

No nongovernmental corporations are parties to this proceeding.

RELATED PROCEEDINGS

Other than the direct appeals that form the basis for this petition, there are no related proceedings for the purposes of Rule 14.1(b)(iii).

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INTRODUCTION

Petitioner is a United States Air Force servicemember who was convicted at a general court-martial. He sought relief on appeal based on the factual insufficiency of his conviction. Factual sufficiency review is a unique right afforded servicemembers convicted of crimes in the military justice system. While a 2021 statute curtailed the availability and robustness of factual sufficiency review conducted by military Courts of Criminal Appeals, it simultaneously expanded factual sufficiency review authority to the CAAF. 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). Specifically, Congress amended Article 67, UCMJ, to grant the CAAF the authority to review and act on the factual sufficiency rulings of the Courts of Criminal Appeals. 10 U.S.C. § 867(c)(1)(C). But the CAAF incorrectly concluded that it does not have the authority to conduct its own factual sufficiency review, depriving Petitioner—and other convicted servicemembers—of the unique right to factual sufficiency review expressly bestowed upon them by Congress.

The Court should grant certiorari and provide necessary clarity that Congress granted factual sufficiency review authority to the CAAF when it amended Article 67, UCMJ, in 2021. Without this clarification, servicemembers will continue to be deprived of this significant review that is intended to protect criminal defendants from wrongful convictions in a system that does not afford them the right to unanimous verdicts.

Additionally, following Petitioner's conviction, a

single military attorney wrongly indicated on a post-trial document that petitioner should be permanently deprived of his Second Amendment rights. The Air Force Court of Criminal Appeals (Air Force Court) has statutory authority to provide relief for this constitutional violation. But the CAAF determined that neither it nor the Air Force Court 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.* Here, the Government indexed Petitioner for a firearms prohibition under 18 U.S.C. § 922(g), likely because the offense of which he was convicted is punishable by confinement exceeding one year. That indexing was erroneous because it is inconsistent with the Nation's history and tradition of firearms regulation. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 19 (2022).

Under 10 U.S.C. § 866(d)(2), the Air Force Court "may provide appropriate relief if the accused demonstrates error . . . in the processing of the court-martial after the judgment was entered into the record." Despite clear statutory language, the CAAF held that the Air Force Court lacks authority to provide relief for erroneous indexing. *United States v. Johnson*, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499 (C.A.A.F. June 24, 2025).

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.s. The Air Force's unique post-trial processing renders the firearm prohibition an "error" that occurs after the entry of judgment for which the Air Force Court could provide appropriate relief. Therefore, this Court should grant review to overrule the CAAF's determination to the contrary. *Johnson*, 2025 CAAF LEXIS 499, at *10–13.

PETITION FOR A WRIT OF CERTIORARI

Staff Sergeant Zhuo H. Zhong, United States Air Force, respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Armed Forces.

DECISIONS BELOW

The decision of the Air Force Court is not reported. It is available at 2024 CCA LEXIS 344, 2024 WL 3888108, and is reproduced at pages 6a–22a. The CAAF's decision is not yet reported. It is available at 2025 CAAF LEXIS 626, 2025 WL 2303340, and reproduced at page 1a–2a.

JURISDICTION

The Air Force Court had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866. The CAAF had jurisdiction pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3). The CAAF granted review and issued its decision without a published opinion on July 25, 2025. On October 15, 2025, the Chief Justice extended the time in which to file a petition for certiorari to December 22, 2025. This Court has jurisdiction under 28 U.S.C. § 1259(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 66(d)(1)(B), UCMJ, 10 U.S.C. § 866(d)(1)(B), provides in relevant part:

> (B) Factual sufficiency review.—
>
> (i) In an appeal of a finding of guilty under subsection (b), the Court [of Criminal Appeals] may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
>
> (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—
>
> (I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and
>
> (II) appropriate deference to findings of fact entered into the record by the military judge.
>
> (iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

Article 67, UCMJ, 10 U.S.C. § 867(c), provides in relevant part:

> (c)(1) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to—

> (A) the findings and sentence set forth in the entry of judgment, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals;
>
> (B) a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the Court of Criminal Appeals; or
>
> (C) the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or modified by the Court of Criminal Appeals as incorrect in fact under section 866(d)(1)(B) of this title (article 66(d)(1)(B)).
>
> . . . .
>
> (4) The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

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 [National Instant Criminal Background Check System (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) 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]

In relevant part, 18 U.S.C. § 922(g)(1) states 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,[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

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[1] 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).

[2] R.C.M. 1111 was added to the Manual for Courts-Martial in 2018 to implement Articles 60c and 63, UCMJ, 10 U.S.C. §§ 860c, 863, 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.

initiates the appellate process.

. . . .

(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 is 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

Congress amended Article 67, UCMJ, granting CAAF the authority to make factual sufficiency determinations. Given this change to the statute, multiple servicemembers brought timely appeals to the CAAF requesting that the court conduct its own

independent factual sufficiency review in their cases.[3] One of those appellants is Petitioner here.

Additionally, following this Court's decision in *Bruen*, 597 U.S. 1, many servicemembers challenged the constitutionality of the firearms prohibitions indicated on the First Indorsements to their EOJs. The CAAF held in *United States v. Johnson* that it and the Air Force Court do not have the authority to correct an erroneous indexing indication during post-trial processing. 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.[4] The Petitioner here was one of those defendants.

A military judge sitting as a general court-martial convicted Petitioner Zhuo H. Zhong, a Staff Sergeant (E-5) in the U.S. Air Force, contrary to his pleas, of indecent visual recording in violation of Article 120c, UCMJ, 10 U.S.C. § 920c. EOJ. The court of first instance exercised federal jurisdiction pursuant to Article 2(a)(1), UCMJ, 10 U.S.C. § 802(a)(1). The military judge sentenced Petitioner to reduction to the

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[3] The first question presented has been raised in a petition for a writ of certiorari currently pending before the Court. *United States v. McLeod*, No. 24-0189, 2025 CAAF LEXIS 454 (C.A.A.F. June 11, 2025), *petition for cert. filed*, No. 25-563 (U.S. Nov. 6, 2025). The Court requested a response to this petition from the United States. *McLeod v. United States*, No. 25-563 (U.S. Dec. 8, 2025), https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/25-563.html.

[4] The second question presented has been raised in a petition for a writ of certiorari currently pending before the Court. *United States v. Schneider*, No. 24-0228, 2025 CAAF LEXIS 605 (C.A.A.F. July 22, 2025), *petition for cert. filed*, No. 25-865 (U.S. Dec. 9, 2025) (consolidating thirteen cases for review).

grade of E-1, confinement for two months, and a bad-conduct discharge. EOJ. On January 20, 2023, the convening authority took no action on the findings or sentence. Convening Authority Decision on Action.

The First Indorsement to Petitioner's EOJ stated that he is subject to a "Firearm Prohibition Triggered Under 18 U.S.C. § 922." EOJ, First Indorsement, February 1, 2023. The Air Force Court provided neither discussion nor relief on the raised issue regarding this prohibition, and it further found Petitioner's convictions factually sufficient and affirmed the findings and sentence. Pet.App. 8a, 22a.

Petitioner requested that the CAAF review his case to determine whether his conviction was factually sufficient and whether 18 U.S.C. § 922 is unconstitutional as applied to him. The CAAF granted review of seven questions related to these issues, including whether the CAAF has statutory authority to decide whether a conviction is factually sufficient and whether military appellate courts can provide appropriate relief for erroneously indicated firearms prohibitions. Pet.App. 3a–5a. The CAAF summarily affirmed the Air Force Court's decision in light of *United States v. Csiti*, 85 M.J. 414 (C.A.A.F. 2025), and *United States v. Johnson,* __ M.J. __, No. 24-0004, 2025 CAAF LEXIS 499 (C.A.A.F. June 24, 2025). Pet.App. 1a.

REASONS FOR GRANTING THE PETITION

This case presents two instances of lower courts improperly interpreting their statutory authorities. In both instances, the courts incorrectly limited their reviews, denying Petitioner and other servicemembers the opportunity to remedy errors in convictions and the processing of courts-martial.

These statutory interpretations go against the plain language of the statutes, departing from this Court's interpretive precedents. *E.g., Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004)) ("As with any question of statutory interpretation, our analysis begins with the plain language of the statute."). These flawed interpretations merit review by this Court.

I. The CAAF's conclusion that it cannot conduct factual sufficiency review is incorrect.

The CAAF has the statutory authority to decide whether an appellant's conviction is factually insufficient. The plain language of Article 67(c)(1)(C), UCMJ, as amended by the FY 2021 NDAA, supports this conclusion. Accordingly, the CAAF may act with respect to any findings reviewed by a Court of Criminal Appeals under Article 66, UCMJ, and affirmed as factually sufficient.

The CAAF summarily affirmed the lower court's decision in Petitioner's case. It stated that it did so "in the light of *United States v. Csiti*," in which it held that it did not have the statutory authority to decide whether a conviction is factually insufficient. 85 M.J. at 416.

In *Csiti*, the CAAF interpreted the changes Congress made to Article 67, UCMJ, as part of the FY 2021 NDAA. The CAAF found that Article 67(c)(1)(C), UCMJ, does not "expressly address" whether the CAAF may act with respect to matters of fact. *Csiti*, 85 M.J. at 418. And relying on Article 67(c)(4), UCMJ—"The Court of Appeals for the Armed Forces shall take action only with respect to matters of law"—the CAAF held that it "does not have

authority to conduct a factual sufficiency review." *Csiti*, 85 M.J. at 418. This misapprehension of the statute's plain, unambiguous language rendered the amended provision effectively meaningless.

A. The plain language of Article 67(c)(1)(C), UCMJ, is unambiguous.

Determining the meaning of Article 67(c)(1)(C), UCMJ, starts and stops with the unambiguous plain language. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)) ("When the words of a statute are unambiguous, then [the] first canon [of statutory construction] is also the last: 'judicial inquiry is complete.'"). The language expresses Congress's intent to give the CAAF the authority to conduct factual sufficiency review.

Article 67(c)(1)(C), UCMJ, provides: "[T]he Court of Appeals for the Armed Forces may act . . . with respect to . . . the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or modified by the Court of Criminal Appeals as incorrect in fact under section 866(d)(1)(B) of this title (article 66(d)(1)(B))." 10 U.S.C. § 867(c)(1)(C). Article 66(d)(1)(B), UCMJ, specifies the authority of Courts of Criminal Appeals to engage in factual sufficiency review. 10 U.S.C. § 866(d)(1)(B).

"[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank*, 503 U.S. at 253–54. Congress's inclusion of the language "under section 866(d)(1)(B)" indicates that section (c)(1)(C) is specifically referring to findings that are either correct or incorrect in fact, since a lower court's review under section (d)(1)(B) is limited to factual sufficiency. The

words "incorrect in fact" must only refer to findings that are dismissed, set aside, or modified, and not to findings that are affirmed. To read the statute as authorizing CAAF to act with respect to findings "as affirmed . . . as incorrect in fact" would be nonsensical—a court cannot affirm findings it determines are incorrect in fact.

The CAAF bypassed this argument, relegating its discussion to a footnote without reaching a conclusion. *Csiti*, 85 M.J. at 418 n.3. But this point should not be ignored. It is this language—the CAAF "may act . . . with respect to . . . findings . . . as affirmed by the Court of Criminal Appeals"—that gives the CAAF the authority to review a lower court's factual sufficiency determination and conduct its own independent factual sufficiency review regardless of whether the lower court found the evidence factually sufficient or insufficient.

In Petitioner's case, the Air Force Court found his conviction factually sufficient. Pet.App. 16a. The change in the law gave the CAAF the authority to conduct its own factual sufficiency review. The CAAF was wrong to conclude otherwise.

B. Article 67(c)(1)(C) is an exception to Article 67(c)(4).

To ensure Article 67(c)(1)(C), UCMJ, has meaning, it is logical to read this subsection as an exception to the older portion of the statute—Article 67(c)(4), UCMJ.

Notwithstanding the addition of (c)(1)(C) to the statute, Article 67, UCMJ, maintains section (c)(4), which states that CAAF "shall take action only with respect to matters of law." 10 U.S.C. § 867(c)(4). This creates a conflict within Article 67(c), UCMJ.

Two provisions of a statute that are in conflict can be resolved by applying the specific-over-general canon of statutory construction. "Ordinarily, where a specific provision conflicts with a general one, the specific governs." *Edmond v. United States*, 520 U.S. 651, 657 (1997) (citing *Busic v. United States*, 446 U.S. 398 (1980)); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 183 (2012) ("If there is a conflict between a general provision and a specific provision, the specific provision prevails."). When a "general permission or prohibition is contradicted by a specific prohibition or permission," the contradiction is eliminated by interpreting the specific provision as "an exception to the general one." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012).

Section (c)(1)(C) is specific. It explicitly grants the CAAF the authority to review, and act, in cases where a military Court of Criminal Appeals affirms, dismisses, sets aside, or modifies the findings of a case under Article 66(d)(1)(B) (the specific section that grants a CCA the authority to conduct a factual sufficiency review). It is more specific than (c)(4)—a general prohibition on the CAAF acting with respect to matters that are not law.

But the CAAF rejected the argument that Article 67(c)(1)(C), UCMJ, created an exception to (c)(4). *Csiti*, 85 M.J. at 418. It saw no conflict and instead relied on Article 67(c)(4), UCMJ, to effectively read any meaning out of Article 67(c)(1)(C), UCMJ.

The conclusion that the newer Article 67(c)(1)(C), UCMJ, prevails over the older Article 67(c)(4), UCMJ, finds additional support in the legal maxim *lex posterior derogat legi priori*—when two statutory

provisions conflict, the later in time prevails. *See*, *e.g.*, *Patterson v. Independent Sch. Dist.*, 742 F.2d 465, 468 (8th Cir. 1984); *Harding v. VA*, 448 F.3d 1373, 1376 n.2 (Fed. Cir. 2006).[5]

When introducing new language in statutes, drafters may overlook the need to modify the current statute to align with the new language.[6] But that does not invalidate the newly added language. This Court should read section (c)(1)(C) as an exception to section (c)(4) to resolve the conflict between the two provisions.

C. The CAAF improperly rendered Congress's amendment to Article 67(c), UCMJ, meaningless.

"When Congress acts to amend a statute, [courts must] presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386,

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[5] *See also United States v. Under Seal*, 709 F.3d 257, 262 n.2 (4th Cir. 2013) (referring to "*leges posteriores priores contrarias abrogant*—the rule that the more recent of two conflicting statutes shall prevail"); *Southern Scrap Material Co. LLC v. ABC Ins. Co.*, 541 F.3d 584, 593 (5th Cir. 2008) (referring to "the longstanding principle that when two statutes irreconcilably conflict, the more recent statute controls"); *Union Iron Co. v. Pierce*, 24 F. Cas. 583 (C.C.D. Ind. 1869) ("when there are two repugnant statutes of different dates, the latter repeals the former to the extent of the repugnancy").

[6] *See, e.g., United States v. Hirst*, 84 M.J. 615, 617–20 (N-M Ct. Crim. App. 2024) (summarizing how Congress amended Article 69, UCMJ, in the Military Justice Act of 2016, which, when read in tandem with Article 65, UCMJ, "resulted in statutory language that was meaningless nonsense," and concluding the amended Article 69, UCMJ, contained a scrivener's error); *United States v. Parino-Ramcharan*, 84 M.J. 445, 451 (C.A.A.F. 2024) (concluding that Article 69(c)(1)(A), UCMJ, 10 U.S.C. § 869(c)(1)(A) (2018), contained a scrivener's error).

397 (1995). The CAAF in *Csiti* instead concluded that the changes to Article 67(c), UCMJ, had no effect on the law.

The CAAF avoided offering a clear interpretation of the language of Article 67(c)(1)(C), UCMJ, ultimately stating that "[w]hile Article 67(c)(1)(C), UCMJ, *may* authorize this Court to act, it does not expressly address the question of whether the Court may act with respect to both matters of fact and matters of law. Only Article 67(c)(4), UCMJ, addresses that issue." *Csiti*, 85 M.J. at 419 (emphasis added). It is unclear what the CAAF concluded, if anything, regarding the language of Article 67(c)(1)(C), UCMJ.

At worst, the CAAF improperly read the new subsection added by Congress in 2021 entirely out of the law, focusing solely on Article 67(c)(4) because that portion predates the new language. *Csiti*, 85 M.J. at 418–19.

At best, the CAAF believes subsection (c)(1)(C) merely codified what was already established in the law. Prior to the 2021 changes to Article 67, UCMJ, the CAAF could review a lower court's factual sufficiency determination to ensure it had applied "correct legal principles." *United States v. Clark*, 75 M.J. 298, 300 (C.A.A.F. 2016) (quoting *United States v. Leak*, 61 M.J. 234, 241 (C.A.A.F. 2005)) ("[W]e retain the authority to review factual sufficiency determinations of the [Courts of Criminal Appeals] for the application of 'correct legal principles,' but only as to matters of law."). Reading the changes to Article 67(c), UCMJ, as merely codifying what was already known to be true, renders Congress's efforts effectively meaningless.

Either way, the CAAF's interpretation of the newly added subsection (c)(1)(C) has no "real and substantial effect." *See Stone*, 514 U.S. at 397.

D. Factual sufficiency review is a crucial safeguard against wrongful convictions in courts-martial.

Both the Government and the CAAF have pointed to factual sufficiency review as a safeguard against the risk of wrongful conviction in military trials. *United States v. Anderson*, 83 M.J. 291, 299 (C.A.A.F. 2023) (citing 10 U.S.C. § 866(d)(1) (2018)) ("Appellants in the military justice system are also entitled to factual sufficiency review on appeal, ensuring panel verdicts are subject to oversight."); Brief for the United States in Opposition at 32, *Martinez, et al. v. United States*, *cert. denied*, 144 S. Ct. 1000 (2024) (No. 23-242) (filed Dec. 27, 2023) (quoting *Anderson*, 83 M.J. at 299) (explaining that factual sufficiency is one of the safeguards against wrongful conviction afforded under the UCMJ).

But, as the CAAF acknowledged in *Anderson*, 83 M.J. at 299 n.9, the 2021 statute limited the availability and robustness of factual sufficiency review in the military justice system. *See* William M. (Mac) Thornberry NDAA for FY 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. at 3611. Particularly significant was an amendment of the statute governing factual sufficiency review to eliminate the Courts of Criminal Appeals' sua sponte obligation to conduct factual sufficiency review of every contested conviction and, when they do conduct such review, requiring them to afford "appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence." *Id.* (codified at Article

66(d)(1)(B)(ii)(I), UCMJ, 10 U.S.C. § 866(d)(1)(B)(ii)(I)).

While narrowing the circumstances in which the Courts of Criminal Appeals will conduct factual sufficiency review and providing for greater deference to trial-level determinations, Congress sensibly enhanced the CAAF's authority to conduct its own factual sufficiency review. In doing so, Congress protected servicemembers against wrongful convictions that might survive the Courts of Criminal Appeals' newly constrained review authority. The CAAF frustrated Congress's balanced approach by repudiating the portion of the legislation designed for servicemembers' protection.

II. The CAAF erred when it found the Air Force Court did not have authority to correct the firearm prohibition.

The First Indorsement to the EOJ indexed Petitioner in NICS, barring him 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, the Air Force Court had authority under Article 66(d)(2), UCMJ, to provide relief for that error. Despite the plain text, the CAAF held that the Air Force Court did not have that authority. The CAAF's decision is antithetical to the plain text of the statute and results in the deprivation of Petitioner's Second Amendment rights. This Court should grant review to fix these errors.

The CAAF incorrectly interpreted Articles 60c and 66(d)(2), UCMJ, stripping the Air Force Court 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. The First Indorsement—which indexed Petitioner—comes after the EOJ, making it part of the post-trial process. Article 66(d)(2) authorizes the Air Force Court to provide relief for post-trial errors. Therefore, the Air Force Court can provide relief for an error in the First Indorsement. The CAAF's decision is contrary to the plain text of applicable statutes, rules, and regulations, and conflicts with the overall statutory scheme.

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

"[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*, 503 U.S. at 253–54 (citations omitted) (internal quotations marks omitted). Yet the CAAF ignored the unambiguous words of 10 U.S.C. § 860c, R.C.M. 1111(b)(3)(F), and the Air Force's regulations.

Article 60c, UCMJ, 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 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. __, 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. 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. 24a, 39a, 52a. 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. 24a, 39a, 52a. Notably, the "additional information that the Secretary concerned may require by regulation" does not include the First Indorsement. Pet. App. at 26a, 41a, 54a.

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. 25a, 40a, 53a. 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. 34a–35a, 49a–50a, 63a, 67a. 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. 24a. 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.

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. *See, e.g.*, *United States v. Williams*, 85 M.J. 121, 122–23 (C.A.A.F. 2024) (explaining how the Army does its indexing before the entry of judgment).[7] Instead, the Secretary of the Air Force specifically delineated the EOJ from the First Indorsement, making them distinct. Pet.App. 25a (showing the First Indorsement is "sign[ed] and *attach[ed]* to the EoJ" and "distributed *with* the EoJ"); *see also* Pet.App. 40a, 53a (emphasis added) (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. 74a. Moreover, the First Indorsement is clear in its single sentence: "The following criminal indexing is required, *following* Entry of Judgment." Pet.App. 75a (emphasis added). The First Indorsement "follows," "accompanies," and "attaches to" the EOJ; it is not the entry of judgment under Article 60c, UCMJ.

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[7] The Air Force is the only service that accomplishes its firearm prohibition reporting after the military judge signs the EOJ; 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 makes the firearm prohibition before entering the judgment into the record).

B. The CAAF's flawed decision in *Johnson* singles out the Air Force for unique treatment under the UCMJ.

The CAAF's holding that the entry of judgment includes the First Indorsement distinguished the Air Force from the other services, contrary to the intent of the "uniform" code. *Johnson*, 2025 CAAF LEXIS 499, at *11–12. "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). Here, the CAAF read the Air Force's regulations in a way that undermines uniformity in the UCMJ. *Johnson*, __ M.J. __, 2025 CAAF LEXIS 499, at *16 n.3 (Johnson, J., concurring). Under the CAAF's reading, the Air Force can alter the application of the MCM, undermining the uniform execution of military justice. *See id.* at *15–16 (Johnson, J., concurring) ("[T]he 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.").

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 the Staff Judge Advocate to supplement the record of trial, hierarchy of laws

dictates that the statute and the R.C.M.s trump the DAFI. But rather than finding the Air Force's regulations unlawful, the CAAF equated the First Indorsement to the EOJ, contrary to the overall statutory and regulatory scheme.

The military judge's signature must "denote[] some kind of terminal event." *Riley v. Bondi*, 606 U.S. 259, 290–91 (2025) (quoting *Smith v. Berryhill*, 587 U.S. 471, 479 (2019)) (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.* at 291 (cleaned up). But, the CAAF's holding leaves a single military service waiting for action, discussion, or change by an attorney *after* a military judge has already entered judgment into the record.

The overall regulatory and statutory scheme confirms 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 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.

Applying its incorrect interpretation, the CAAF assessed whether it or the Air Force Court had jurisdiction to review the firearm prohibition in the First Indorsement. *Johnson*, 2025 CAAF LEXIS 499. The CAAF found that the reason it did not have

authority was because "the [Air Force Court] itself also lacks authority." *Id.* at *2.

The CAAF first concluded that the firearm indexing requirement was not part of the findings or the sentence. *Id.* at *9–10. Thus, the CAAF could not alter the indexing requirement under its authority to act upon the findings or the sentence. *Id.*; 10 U.S.C. § 867(c)(1)(A). Specialist 3 Johnson argued, though, that the Air Force Court had authority under 10 U.S.C. § 866(d)(2). *Id.* at *10. This subsection provides the Air Force Court 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." 10 U.S.C. § 866(d)(2). The CAAF rejected this because it found that the "entry of judgment" included the "First Indorsement." *Johnson*, 2025 CAAF LEXIS 499, at *11–12. This meant that the First Indorsement was part of the judgment and, therefore, does not occur "after," during post-trial processing. This holding is confounding. The CAAF's decision means that an attorney signing the First Indorsement "enters judgment," instead of a military judge, contrary to Article 60c, UCMJ. *Id.* at *11–13.

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 (Johnson, J., concurring in part and in the judgment). 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 an attorney after the military judge signs the EOJ, then that would affect

these other actions, rendering the "uniform" code different for the Air Force than any other service. *Id.* at *15.

Consistent with the statutory text, the concurrence determined that entry of judgment occurs when the military judge signs the EOJ, not when an attorney signs the First Indorsement. 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.*

Under the majority's approach, the Air Force has someone other than the military judge enter judgment. This "fractur[es] the very uniformity the [UCMJ] sought to create." *Id.* at *16 (Johnson, J., concurring in part and in the judgment).

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 on the First Indorsement. *Johnson*, 2025 CAAF LEXIS 499, at *12–13. Under the plain language of 10 U.S.C. § 866(d)(2), the Air Force Court 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*, 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 Johnson*, 2025 CAAF LEXIS 499, at *15 n.1 (Johnson, J., concurring in part and in the judgment) (discussing the "civilian analogue," Federal Rule of Criminal Procedure 32(k)(1), which Article 60c, UCMJ, was modeled upon to show it is the judge's *signature* that enters judgment into the record).

Due to the Air Force's unique post-trial processing requirements, the Air Force Court could provide relief to Petitioner under Article 66(d)(2), UCMJ. The Air Force Court could review the unconstitutional firearm prohibition and order a correction of the record of trial pursuant to R.C.M. 1112(d)(2), which allows "a superior competent authority to return a record of trial to the military judge for correction." The CAAF's holding in *Johnson* barred such a resolution.

D. There was post-trial error because Petitioner was improperly indexed under 18 U.S.C. § 922. This violated his 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."

Bruen, 597 U.S. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961)).

Petitioner, despite having a felony conviction, is 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" (emphasis added)); *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) (same); *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024) (same); *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) (rejecting as-applied challenge to 18 U.S.C. § 922(g)(1)); *United States v. Jackson*, 110 F.4th 1120 (8th Cir. 2024) (affirming conviction for violating 18 U.S.C. § 922(g)(1)); *United States v. Dubois*, 139 F.4th 887 (11th Cir. 2025) (finding 18 U.S.C. § 922(g)(1) constitutional).

Petitioner's 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).[8] *Zherka v.*

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[8] While the Government does not denote which section of 18 U.S.C. § 922(g) applies to Petitioner in the First Indorsement, he "has been convicted . . . of[] a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C.

Bondi, 140 F.4th 68, 75 (2d Cir. 2025); *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" in which Petitioner desires to engage. *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. § 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). *See Range*, 124 F.4th at 228–31 (applying *Bruen* and *Rahimi* anew to an as-applied challenge and finding 18 U.S.C. 922(g)(1) unlawful); *Diaz*, 116 F.4th at 470–71 (same); *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);

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§ 922(g)(1). None of the other subsections (18 U.S.C. §§ 922(g)(2)–(9)) are applicable.

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).

Because the Air Force Court 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). 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 Air Force Court will need to review the 18 U.S.C. § 922(g) indication on Petitioner's First Indorsement for error under *Bruen*'s test. When the Air Force Court conducts this fact-specific inquiry as-applied to Petitioner, it is likely to find error and provide relief.

E. Correcting the First Indorsement would restore Petitioner's 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. 66a-67a. The injury is Petitioner's loss of his Second Amendment rights. The cause is due to the Air Force 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 Petitioner wants to purchase a firearm, a seller must run a 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. Because sellers must run a 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.[9]

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

Here, the DAF-CJIC is responsible for Air Force criminal indexing. Pet.App. 67a. 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. 34a, 49a. By indexing Petitioner under 18 U.S.C. § 922, the Air Force entered Petitioner into NICS. Any attempt to obtain a firearm would trigger the required background check and a denial of Petitioner's rights.

Relief under 10 U.S.C. § 866(d)(2) is available to Petitioner. 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. 67a. Thus, any amended First Indorsement would be transmitted to NICS. Removal from NICS would then restore Petitioner's ability to possess firearms.

CONCLUSION

By incorrectly interpreting their statutory review authorities, military appellate courts have wrongfully curtailed the scope of their reviews and the relief they may grant. This forecloses the opportunities codified in law for Petitioner, and similarly-situated servicemembers, to seek relief for wrongful convictions and erroneous deprivations of constitutional rights. This Court should grant the petition for certiorari.

Respectfully submitted,

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