No. 25-742

In the Supreme Court of the United States

ZHUO H. ZHONG, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
A. TYSEN DUVA
Assistant Attorney General
ANN O'CONNELL ADAMS
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Armed Forces had statutory authority to review the correctness of factual findings underlying petitioner's conviction.

2. Whether the Air Force Court of Criminal Appeals has authority to review an "indorsement" accompanying petitioner's judgment and stating that his conviction triggered 18 U.S.C. 922's prohibition on possession of firearms.

PARTIES TO THE PROCEEDING

Petitioner is Zhuo H. Zhong. Respondent is the United States of America.

ADDITIONAL RELATED PROCEEDINGS

General Court-Martial (Shaw Air Force Base, SC):

United States v. *Zhong* (Feb. 1, 2023) (no docket number)

United States Air Force Court of Criminal Appeals:

United States v. *Zhong*, No. ACM 40441 (Aug. 21, 2024)

United States Court of Appeals for the Armed Forces:

United States v. *Zhong*, No. 25-0011 (July 25, 2025)

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 2
Argument 8
Conclusion 18

TABLE OF AUTHORITIES

Cases:

Clinton v. *Goldsmith*, 526 U.S. 529 (1999) 9, 10
Epic Sys. Corp. v. *Lewis*, 584 U.S. 497 (2018) 13
United States v. *Clark*, 75 M.J. 298 (C.A.A.F. 2016) ... 10, 11
United States v. *Csiti*, 85 M.J. 414 (C.A.A.F. 2025) 7-10, 12, 13
United States v. *Denedo*, 556 U.S. 904 (2009) 9
United States v. *Harvey*, 85 M.J. 127 (C.A.A.F. 2024) 9, 10, 12, 13
United States v. *Johnson*, 86 M.J. 8 (C.A.A.F. 2025), cert. denied, No. 25-682 (Jan. 12, 2026) 4, 7, 8, 15, 17
United States v. *McCrary*, 1 C.M.R. 1 (A.F. Ct. Crim. App. 1951) 10
United States v. *Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024) 6
United States v. *Williams*, 85 M.J. 121 (C.A.A.F. 2024) 17
Vincent v. *Bondi*, 127 F.4th 1263 (10th Cir. 2025), cert. denied, No. 24-1155 (Mar. 2, 2026) 18

Constitution, statutes, and rules:

U.S. Const. Amend. II 18

Statutes and rules—Continued: Page

Uniform Code of Military Justice,
10 U.S.C. 801 *et seq.*:
Art. 60(a)(1)(A), 10 U.S.C. 860(a)(1)(A) 4
Art. 60(a)(1)(B), 10 U.S.C. 860(a)(1)(B) 4
Art. 60(a)(1)(C), 10 U.S.C. 860(a)(1)(C) 4, 16
Art. 60c, 10 U.S.C. 860c 6, 8
Art. 60c(a)(1), 10 U.S.C. 860c(a)(1) 5, 16
Art. 60c(a)(1)(B), 10 U.S.C. 860c(a)(1)(B) 5
Art. 66(a)(1), 10 U.S.C. 866(a)(1) 9
Art. 66(b), 10 U.S.C. 866(b) 9
Art. 66(d)(1)(A), 10 U.S.C. 866(d)(1)(A) 6, 8, 15
Art. 66(d)(1)(B), 10 U.S.C. 866(d)(1)(B) 5, 9
Art. 66(d)(1)(B)(ii), 10 U.S.C. 866(d)(1)(B)(ii) 6
Art. 66(d)(1)(B)(ii)(I), 10 U.S.C. 866(d)(1)(B)(ii)(I) 5
Art. 66(d)(1)(B)(iii), 10 U.S.C. 866(d)(1)(B)(iii) 14
Art. 66(d)(2), 10 U.S.C. 866(d)(2) 6-8, 15-17
Art. 67(a), 10 U.S.C. 867(a) 9
Art. 67(c)(1), 10 U.S.C. 867(c)(1) 11
Art. 67(c)(1)(A), 10 U.S.C. 867(c)(1)(A) 8, 15
Art. 67(c)(1)(C), 10 U.S.C. 867(c)(1)(C) 7, 8, 11-14
Art. 67(c)(4), 10 U.S.C. 867(c)(4) 7, 10-13
Art. 117a, 10 U.S.C. 917a 3
Art. 120c, 10 U.S.C. 920c 2, 3
Art. 120c(d)(2), 10 U.S.C. 920(d)(2) 6
18 U.S.C. 922 .... 4-9, 15, 17, 18
18 U.S.C. 922(g)(1) 18
18 U.S.C. 925(c) 18
50 U.S.C. 654(d) (1952) 10

Rules—Continued: Page

Rules for Courts-Martial:

Rule 917 ... 3
Rule 1101(a)(6) ... 4
Rule 1104 ... 18
Rule 1104(b) ... 4
Rule 1104(b)(2)(C) ... 5
Rule 1111(b)(3)(F) ... 5, 16
Rule 1111(c) ... 5, 18
Rule 1112(d) ... 5, 18

Miscellaneous:

United States Air Force Manual 71-102 (2020), https://perma.cc/Z3UY-ZP3H. ... 18

Dep't of the Air Force, *Instr. 51-201*, *Administration of Military Justice* (Apr. 14, 2022) ... 4, 5, 15, 16, 18

In the Supreme Court of the United States

No. 25-742

ZHUO H. ZHONG, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The summary order of the Court of Appeals for the Armed Forces (Pet. App. 1a-2a) is reported at 86 M.J. 264. The opinion of the Air Force Court of Criminal Appeals (Pet. App. 6a-22a) is available at 2024 WL 3888108.

JURISDICTION

The judgment of the Court of Appeals for the Armed Forces was entered on July 25, 2025. On October 15, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 22, 2025. The petition for a writ of certiorari was filed on December 19, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1259(3).

STATEMENT

Following a trial by general court-martial, petitioner was convicted of one specification of indecent recording,

in violation of Article 120c of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 920c. Pet. App. 7a. Petitioner was sentenced to two months of confinement, a bad-conduct discharge, and a reduction in grade. *Ibid.* The United States Air Force Court of Criminal Appeals (AFCCA) affirmed. *Id.* at 6a-22a. The United States Court of Appeals for the Armed Forces (CAAF) granted discretionary review, *id.* at 3a-5a, and affirmed in a summary order, *id.* at 1a-2a.

1. Petitioner was a servicemember in the United States Air Force when he met a woman, "TM," through a dating application. Pet. App. 8a. In April 2021, he recorded TM while they were having consensual sex. *Ibid.* Petitioner sent TM at least one recording, which she asked him to delete because she did not like the way she looked. *Ibid.*

On October 31, 2021, TM went to petitioner's home in Goldsboro, North Carolina. Pet. App. 8a. After eating and watching a movie, they went upstairs to have consensual sex. *Ibid.* While they were having sex, petitioner recorded TM on his phone without TM's knowledge. *Id.* at 8a, 11a.; see *id.* at 8a-9a. As TM was preparing to leave petitioner's room, petitioner was lying in bed "fully immersed in whatever was on his phone screen." *Id.* at 10a. TM suspected that petitioner had recorded them having sex, so she told petitioner to "'[d]elete it,'" at which point petitioner "froze." *Id.* at 10a; see *id.* at 8a-9a.

As TM started to approach petitioner, he told her "[i]t was only on Snapchat." Pet. App. 10a, 12a. TM saw the video, which clearly showed her buttocks from behind, and she watched petitioner delete it. *Id.* at 9a-12a. TM was upset and left petitioner's home. *Id.* at 9a. During her drive home, she called the police and told them that

she was having sex with someone, that she thought that he had recorded her, that she had asked him to delete the recording and he did, and that she thought he had other nonconsensual recordings of her. *Ibid.*

In November 2021, agents from the Air Force Office of Special Investigations (OSI) interviewed petitioner, and petitioner acknowledged that he had twice recorded TM while they were having consensual sex: one recording with her permission, and another without. Pet. App. 9a, 11a. He stated that the nonconsensual recording occurred after he and TM ate and watched a movie and that he had recorded her "on a whim." *Id.* at 11a. Petitioner also confirmed to investigators that TM had asked him to delete the video, but asserted that he thought it was alright to record her because "[they] recorded before." *Ibid.* The OSI agents subsequently coordinated with local police to obtain search warrants for petitioner's cell phone, laptop, and Snapchat records. *Id.* at 9a. The deleted video from October 2021 was not recovered. *Ibid.*

2. Petitioner was charged with two specifications of wrongful distribution of intimate visual images, in violation of Article 117a of the UCMJ, 10 U.S.C. 917a, and one specification of indecent recording, in violation of Article 120c of the UCMJ, 10 U.S.C. 920c. Charge Sheet 2-3. Petitioner was tried by a military judge sitting as a general court-martial. Pet. App. 7a. After a trial at which TM testified and the government introduced a recording of the OSI agents' interview with petitioner, *id.* at 9a-12a, petitioner moved for a finding of not guilty on all charges under Rule for Courts-Martial (R.C.M.) 917. Pet. App. 12a. The military judge denied the motion and found petitioner guilty of the specification of indecent recording, but not guilty of the

specifications of wrongful distribution. *Id.* at 7a & n.2, 12a; Statement of Trial Results 1-3. Petitioner was sentenced to two months of confinement, a bad-conduct discharge, and a reduction in grade. Pet. App. 7a.

At the conclusion of petitioner's general court-martial, the military judge signed the "Statement of Trial Results," which by statute includes the judge's findings, the sentence, and "such other information as the President may prescribe by regulation." 10 U.S.C. 860(a)(1)(A)-(C). Through a delegation from the President, see R.C.M. 1101(a)(6), the Secretary of the Air Force has directed that the Statement of Trial Results must be accompanied by an "indorsement" stating whether the conviction requires indexing for various collateral purposes, such as whether the conviction triggers DNA-processing requirements, sex-offender registration notification, or a firearm-possession prohibition under 18 U.S.C. 922. Dep't of the Air Force, *Instr. 51-201*, *Administration of Military Justice* ¶ 20.6 (Apr. 14, 2022) (Instr. 51-201); see *United States* v. *Johnson*, 86 M.J. 8, 10 (C.A.A.F. 2025), cert. denied, No. 25-682 (Jan. 12, 2026). An indorsement may be corrected "at any time," Instr. 51-201 ¶ 21.3, and errors in the Statement of Trial Results or post-trial processing may be corrected by post-trial motion under R.C.M. 1104(b).

The indorsement in petitioner's case indicated, *inter alia*, that petitioner's conviction triggered 18 U.S.C. 922's prohibition on the possession of firearms. Statement of Trial Results 4. After a period of time allowing for post-trial motions and review by the convening authority, the military judge entered judgment. See Entry of Judgment 1; 10 U.S.C. 860c(a)(1). The Secretary of the Air Force requires the judgment to include the Statement of Trial Results along with any post-trial

modifications, as well as an updated indorsement noting any criminal indexing requirements. Instr. 51-201 ¶ 20.41; Pet. App. 25a; see R.C.M. 1111(b)(3)(F); 10 U.S.C. 860c(a)(1)(B). Errors in the entry of judgment may be corrected as specified in Rules for Courts-Martial 1111(c) and 1112(d), and clerical errors may also be corrected under R.C.M. 1104(b)(2)(C). Here, the indorsement on the judgment stated that petitioner was subject to 18 U.S.C. 922's firearm-possession restriction. Entry of Judgment 4.

3. The AFCCA affirmed in a nonprecedential opinion. Pet. App. 6a-22a.

Among other things, the court evaluated the evidence for "factual sufficiency." Pet. App 13a; see *id.* at 9a-16a. The court explained that the test for "factual sufficiency" under the governing statutes required the accused to "make[] a specific showing of a deficiency in proof," after which the court could "weigh the evidence and determine controverted questions of fact" under a deferential standard, granting relief only if "clearly convinced that the finding of guilty was against the weight of the evidence." *Id.* at 13a (quoting UCMJ Art. 66(d)(1)(B), 10 U.S.C. 866(d)(1)(B)). And, applying that standard, the AFCCA affirmed the court-martial's findings after giving "appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence." *Id.* at 14a (quoting UCMJ Art. 66(d)(1)(B)(ii)(I), 10 U.S.C. 866(d)(1)(B)(ii)(I)).

The AFCCA found the evidence sufficient to show that petitioner had recorded TM's private areas because TM had testified numerous times that the recording showed her buttocks, a private area within the meaning of UCMJ Article 120c(d)(2), 10 U.S.C. 920c(d)(2). Pet. App. 14a-16a. And the AFCCA found the evidence

sufficient to show that petitioner would not have been reasonable in thinking that he had consent to record TM without her knowledge. *Ibid.* The court accordingly was "not clearly convinced that the finding of guilty * * * was against the weight of the evidence." *Id.* at 16a (citing UCMJ Art. 66(d)(1)(B)(ii), 10 U.S.C. 866(d)(1)(B)(ii)).

In the AFCCA, petitioner also attempted to bring an as-applied constitutional challenge to 18 U.S.C. 922's prohibition on possession of firearms, arguing that the AFCCA could review that challenge by reviewing the "indorsement" accompanying the judgment, which stated that petitioner was subject to 18 U.S.C. 922's prohibition. Pet. App. 8a. The AFCCA "carefully considered" that issue and determined that it "warrant[ed] neither discussion nor relief" based on a prior decision recognizing that the court lacked statutory authority to review an indorsement's indication because such an indication was not part of the findings or sentence that may be reviewed under Article 66(d)(1)(A). *Ibid.* (citing *United States* v. *Vanzant*, 84 M.J. 671 (A.F. Ct. Crim. App. 2024)). Before the AFCCA, petitioner did not argue that the court had jurisdiction to review his challenge under Article 66(d)(2), which allows the AFCCA to "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 [10 U.S.C. 860c]," 10 U.S.C. 866(d)(2), and the AFCCA did not comment on that provision.

4. Petitioner petitioned for review by the CAAF. See Pet. App. 3a-5a. In a supplement to his petition, petitioner for the first time argued that the AFCCA had authority to review the indorsement under its Article 66(d)(2) authority to correct errors "in the processing of

the court-martial after the judgment was entered into the record," 10 U.S.C. 866(d)(2). Supp. to Pet. For Grant of Rev. 19-25 (Nov. 5, 2024). The CAAF granted discretionary review on several issues, including whether the AFCCA committed a legal error in its application of factual sufficiency review, whether the CAAF has statutory authority to engage in its own factual sufficiency review, and whether either the AFCCA or the CAAF has statutory authority to review petitioner's constitutional challenge to 18 U.S.C. 922 based on the indorsement's indication that he is subject to that prohibition for criminal indexing purposes. See Pet. App. 3a-5a.

The CAAF subsequently affirmed in a summary order. Pet. App. 1a-2a. The court found that "any error" in the AFCCA's application of the factual sufficiency standard "was harmless." *Id.* at 1a. And the court rejected the rest of petitioner's arguments "in * * * light of" its recent decisions in *United States* v. *Csiti*, 85 M.J. 414 (C.A.A.F. 2025), and *Johnson*, 86 M.J. 8. Pet. App. 1a.

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

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

it cannot review the correctness of factual findings. *Ibid.*

In *Johnson*, the CAAF had observed that "no Court of Criminal Appeals has the authority to act upon [an indorsement's] indication" that a conviction triggers 18 U.S.C. 922's prohibition on the possession of firearms. 86 M.J. at 9. *Johnson* explained that a firearm restriction listed on an indorsement is not part of the "findings" or "sentence" on which either the AFCCA or the CAAF has authority to act under Article 66(d)(1)(A), 10 U.S.C. 866(d)(1)(A), and Article 67(c)(1)(A), 10 U.S.C. 867(c)(1)(A). 86 M.J. at 12.

Johnson also recognized that the AFCCA lacks authority to review an indorsement under Article 66(d)(2), 10 U.S.C. 866(d)(2), which allows the AFCCA to "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 [10 U.S.C. 860c]." 86 M.J. at 13 (citation omitted). The court explained that "any information in the indorsement is part of the [entry of judgment] and cannot be an 'error . . . in the processing of the court-martial *after the judgment was entered into the record*.'" *Ibid.* (quoting UCMJ Art. 66(d)(2), 10 U.S.C. 866(d)(2)).

ARGUMENT

Petitioner contends (Pet. 11-18) that the CAAF erred by finding that it lacks statutory authority to review whether the factual findings underlying his conviction were correct.* He further contends (Pet. 18-31) that the AFCCA had statutory authority to review the indorsement to his judgment, which indicated that

---

* Another pending petition for a writ of certiorari raises the same issue. See *McLeod* v. *United States*, No. 25-563 (filed Nov. 6, 2025).

petitioner's conviction triggered 18 U.S.C. 922's prohibition on the possession of firearms. The CAAF's decision is correct and does not conflict with any decision of this Court or another court. No further review is warranted.

1. The CAAF correctly recognized that it lacks statutory authority to review whether factual findings are correct, which military appellate courts call "factual sufficiency review." *United States* v. *Csiti*, 85 M.J. 414, 418 (C.A.A.F. 2025).

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

Congress has given the AFCCA, on first-line review of the conviction, authority to review "whether the finding[s]" of fact by the court-martial are "correct in fact," to "determine controverted questions of fact," and to assess whether a "finding of guilty was against the weight of the evidence" under the standard specified in Article 66, all of which the statute refers to as "Factual sufficiency review." 10 U.S.C. 866(d)(1)(B); see *United States* v. *Harvey*, 85 M.J. 127, 129-130 (C.A.A.F. 2024). Previously, that review required the AFCCA to determine for itself whether the evidence supported a defendant's conviction "beyond a reasonable doubt," but in 2021 Congress made the standard of review more

deferential to the court-martial. *Harvey*, 85 M.J. at 130. Here, the AFCCA addressed and rejected petitioner's sufficiency arguments, determining that it was "not clearly convinced that the finding of guilty of this specification was against the weight of the evidence." Pet. App. 16a. It further observed that, even if it were required to conduct more searching review, it was independently "convinced" of petitioner's guilt "beyond a reasonable doubt." *Id.* at 16a n.4; see *id.* at 9a-16a.

In contrast to AFCCA factual-sufficiency review, the CAAF's statutory jurisdiction is "narrowly circumscribed," *Goldsmith*, 526 U.S. at 535, and Congress has never provided the CAAF authority to engage in its own weighing of the evidence. Instead, in Article 67(c)(4) of the UCMJ, Congress has specified that the CAAF "shall take action only with respect to matters of law." 10 U.S.C. 867(c)(4). That limitation on the CAAF's review has existed since Congress first enacted the UCMJ. See 50 U.S.C. 654(d) (1952); see also *Csiti*, 85 M.J. at 418 n.5. Indeed, the first opinion published by the Court of Military Appeals (the predecessor to the CAAF) "recognized that Congress had limited [that court] to correction of errors of law and that [its] writ did not extend to questions of fact." *United States* v. *Clark*, 75 M.J. 298, 299-300 (C.A.A.F. 2016) (citing *United States* v. *McCrary*, 1 C.M.R. 1, 3 (1951)). And since then, the CAAF has repeatedly recognized that it cannot engage in the sort of "factual sufficiency" review that Congress provided to the AFCAA. *Id.* at 300; see *id.* at 299-300. It accordingly reviewed the AFCCA's factual-sufficiency analysis in this case only for reversible legal error. Pet. App. 1a; see *id.* at 4a.

b. Petitioner acknowledges (Pet. 14) the "general prohibition on the CAAF acting with respect to matters

that are not law," but claims that 2021 amendments to the UCMJ created an exception. In particular, petitioner relies on Congress's amendment to Article 67(c)(1)(C), which in its current form states that the CAAF "may act * * * with respect to" "the findings set forth in the entry of judgment, as affirmed, dismissed, set aside, or mod[i]fied by the Court of Criminal Appeals as incorrect in fact." 10 U.S.C. 867(c)(1)(C). Petitioner asserts (Pet. 13-14) that Article 67(c)(1)(C) "conflict[s]" with the restriction in Article 67(c)(4) that limits the CAAF's review to "'matters of law,'" and therefore must be read as an implicit exception that allows the CAAF to "conduct its own factual sufficiency review" on top of the AFCCA's. See Pet. 13-15.

As the CAAF has explained, however, no such conflict exists. Read in conjunction with Article 67(c)(4)'s continued constraint that the CAAF "shall take action only with respect to matters of law," 10 U.S.C. 867(c)(4), the CAAF's authority to "act * * * with respect to" the factual findings simply authorizes review for legal error in those findings, 10 U.S.C. 867(c)(1); see *Clark*, 75 M.J. at 299. Indeed, this case contains an example of such review: had the CAAF accepted petitioner's claim that the AFCCA "erroneously interpreted and applied the amended factual sufficiency standard," Pet. App. 4a (capitalization altered), it would have had the authority to act on that conclusion. See *Clark*, 75 M.J. at 300 ("[W]e have held that we retain the authority to review factual sufficiency determinations of the CCAs for the application of 'correct legal principles,' but only as to matters of law.") (citation omitted).

Petitioner accordingly errs in asserting (Pet. 15) that the CAAF's interpretation renders Subparagraph (c)(1)(C) "meaningless." Petitioner also posits (Pet. 14-15)

that Subparagraph (c)(1)(C) should be read more broadly, either because it is the more "specific" provision in this context, or because it is "later in time," and Congress may have "overlook[ed] the need to modify" the constraint that the CAAF review only legal questions. But even assuming some sort of inconsistency, the more specific provision as to the grounds on which the CAAF may act—as opposed to the potential objects of its actions—is Subparagraph (c)(4), which instructs that the CAAF "shall take action only with respect to matters of law." 10 U.S.C. 867(c)(4). And petitioner's reading could effectively nullify Subparagraph (c)(4)'s restriction by permitting the CAAF to decide for itself "what the facts are." *Csiti*, 85 M.J. at 418.

More fundamentally, it is extremely unlikely that Congress would have substantially altered the longstanding scope of the CAAF's review by giving it authority to "conduct its own factual sufficiency review," Pet. 13, without expressly saying so. Nor is Congress likely to have "overlook[ed]" (Pet. 15) the longstanding restriction of the CAAF's authority to act only on matters of law, which appears just a few subparagraphs later within the same subsection of the statute, and which the CAAF has for decades interpreted to bar factual sufficiency review. Indeed, Congress's 2021 amendments made extensive changes to the AFCCA's factual sufficiency standard, see *Harvey*, 85 M.J. at 130, and it would be surprising if Congress gave the CAAF the authority to conduct factual sufficiency review, but only implicitly and without specifying a standard. Thus, "in approaching a claimed conflict," this Court "come[s] armed with the strong presumption that repeals by implication are disfavored and that Congress will specifically address pre-existing law when it wishes to suspend its normal operations in a

later statute." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 510 (2018) (brackets, citation, and internal quotation marks omitted).

Petitioner hypothesizes (Pet. 17-18) that Congress intended to give the CAAF new authority to review the correctness of factual findings as a way to "balance[]" the effect of different amendments that restricted the scope of the AFCCA's factual review. See Pet. App. 13a-14a (describing the new standard); see also *Harvey*, 85 M.J. at 129-132 (explaining the changes). But nothing in the statutory text supports that hypothesis—particularly since Congress kept Subparagraph (c)(4) in place without change. The more likely explanation is that Congress codified the CAAF's practice of reviewing legal questions arising from the AFCCA's factual determinations, thus allowing the CAAF to review the AFCCA's interpretation of the new legal standard governing the AFCCA's factual determinations.

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

For one thing, even if petitioner were correct that Article 67(c)(1)(C) permits the CAAF to weigh the evidence for itself, the CAAF has not yet decided whether that provision extends to cases like petitioner's. See *Csiti*, 85 M.J. 417 & n.3. In particular, the CAAF has suggested that Article 67(c)(1)(C) might authorize that court to "act" on factual findings only when the AFCCA has determined that a finding was "incorrect in fact," *id.* at 417, such as when that court decides to "dismiss, set aside, or modify the finding, or affirm a lesser finding," 10 U.S.C. 866(d)(1)(B)(iii). Here, however, the AFCCA affirmed the court-martial's factual findings without change. Pet. App. 16a, 22a. It is thus unclear that petitioner would obtain the kind of factual review

that he seeks even if he prevailed in this Court. And the fact that this case implicates that novel and so-far unaddressed question about the reach of Article 67(c)(1)(C) is another reason to deny certiorari.

In addition, even if the CAAF reviewed the factual findings here and weighed the evidence for itself, petitioner offers no reason to think he would be entitled to relief. The AFCCA made clear that the factual findings were sufficient for the specification at issue and that it was independently "convinced of [petitioner's] guilt * * * beyond a reasonable doubt." Pet. App. 16a n.4. The CAAF, in turn, rejected petitioner's argument that the AFCCA applied the wrong legal standard in reviewing the court-martial's factual findings, finding that "any error was harmless." *Id.* at 1a; see *id.* at 4a. There is no significant likelihood that the CAAF would overturn his convictions on factual grounds.

2. The CAAF also correctly recognized that neither it nor the AFCCA has statutory authority to review the indorsement that accompanied petitioner's judgment. This Court recently denied certiorari on that issue in a petition consolidating 13 cases for review. *Schneider* v. *United States*, No. 25-685 (Jan. 12, 2026). It should do the same here.

a. Exercising delegated authority from the President, the Secretary of the Air Force has required an entry of judgment to include an indorsement that indicates certain collateral consequences of the conviction for indexing purposes, such as whether the conviction triggers DNA processing requirements, sex-offender registration notification, or a firearm-possession prohibition under 18 U.S.C. 922. See Instr. 51-201 ¶ 20.6; *United States* v. *Johnson*, 86 M.J. 8, 10 (C.A.A.F. 2025), cert. denied, No. 25-682 (Jan. 12, 2026). In petitioner's

case, the indorsement indicated, *inter alia*, that petitioner's conviction triggered 18 U.S.C. 922's firearm-possession prohibition. See Entry of Judgment 4.

In his direct appeal, petitioner sought to bring a constitutional challenge to Section 922's application in his circumstances. See Pet. App. 5a, 8a. But as the CAAF explained in its prior decision in *Johnson*, the indorsement's indication of a collateral consequence is not reviewable on direct review of a conviction. See 86 M.J. at 12. Petitioner no longer appears to dispute (Pet. 24) that the indorsement is neither a "finding[]" nor part of the "sentence" that military courts of criminal appeals may review under Article 66(d)(1)(A), 10 U.S.C. 866(d)(1)(A), and Article 67(c)(1)(A), 10 U.S.C. 867(c)(1)(A). See *Johnson*, 86 M.J. at 12. And the AFCCA also may not review the indorsement under its Article 66(d)(2) authority to address "demonstrate[d] error or excessive delay in the processing of the court-martial after the judgment was entered into the record." 10 U.S.C. 866(d)(2). By order of the Secretary of the Air Force, the indorsement is entered into the record simultaneously with the judgment, so an indorsement's indication of a collateral consequence cannot be an error "after the judgment was entered into the record." See *Johnson*, 86 M.J. at 13 (quoting UCMJ Art. 66(d)(2), 10 U.S.C. 866(d)(2)).

Petitioner argues (Pet. 20-25) that the indorsement is a distinct document from the judgment and that "entry of judgment occurs when the military judge signs the [entry of judgment], not when an attorney signs the First Indorsement." Pet. 25. But the key question is not the separateness of the documents, but whether petitioner seeks review of a processing matter that occurred "*after* the judgment was entered *into the*

record." 10 U.S.C. 866(d)(2) (emphases added). Here, as the Secretary has instructed, the indorsement was entered into the record and distributed *simultaneously* with the judgment—it is part of the same document and bears the same date. See Entry of Judgment 1, 4; see also Instr. 51-201 ¶ 20.41. Contrary to petitioner's contention (Pet. 25), that does not mean that "someone other than the military judge enter[s] judgment." It simply means that the judgment is entered into the record *with* the indorsement. See Entry of Judgment 4.

Petitioner errs in arguing (Pet. 22) that the CAAF's decision improperly "singles out the Air Force for unique treatment." Even if the CAAF's decision in this case created any meaningful difference from practice in cases arising from other branches of the military, any variation would stem from the fact that the Secretary of the Air Force requires an indorsement accompanying the judgment, while other branches do not. That difference is consistent with Article 60c's directive that a military judge enter judgment "[i]n accordance with rules prescribed by the President," 10 U.S.C. 860c(a)(1), and the President's decision to permit the Secretary concerned to prescribe different regulations for the entry of judgment, see R.C.M. 1111(b)(3)(F); see also 10 U.S.C. 860(a)(1)(C). Moreover, in practice, it is petitioner's position that would cause a divergence between different branches of military service, as he does not dispute that criminal defendants in other branches of the military may not use a direct appeal from their convictions to raise constitutional challenges to collateral consequences noted in criminal indexing. See Pet. 21 n.7; cf. *United States* v. *Williams*, 85 M.J. 121, 126-127 (C.A.A.F. 2024) (finding that the Army Court of Criminal Appeals lacked authority to review an indication of

"collateral consequences of the accused's conviction" included in the Statement of Trial Results).

Petitioner's reliance on Judge Johnson's concurrence in the CAAF's decision in *Johnson* is misplaced. See 86 M.J. at 14 (Johnson, J., concurring in part and in the judgment). Judge Johnson stated that the majority's analysis in *Johnson* had left "unclear" when the entry of judgment occurs and noted that, if the timing of post-judgment deadlines turns on when the indorsement takes place, that "could potentially set the Air Force and Space Force apart from the other services" that do not require an indorsement along with the judgment. *Id.* at 14-15. But petitioner's argument does not concern the date of the entry of judgment for purposes of calculating deadlines. And Judge Johnson agreed that an indorsement's indication of a firearm-possession ban under 18 U.S.C. 922 "is a collateral consequence of a conviction" that "neither the [AFCCA] nor [the CAAF] has authority to act upon." *Johnson*, 86 M.J. at 14.

b. In all events, the issue does not warrant this Court's review. As a threshold matter, petitioner failed to raise any argument for relief under Article 66(d)(2) before the AFCCA, instead raising the issue in a supplemental brief before the CAAF. See Supp. to Pet. For Grant of Rev. 19-25. It is therefore far from clear that the CAAF would provide relief in the first instance even if it were able to do so. Cf. *Williams*, 85 M.J. at 126-127 (explaining that when a defendant "did not raise the issue to the [Court of Criminal Appeals]," he "consequently did not trigger the [court's] correction authority under Article 66(d)(2)").

Nor is there any practical need for the sort of review that petitioner seeks. Administrative errors in the

indorsement may be corrected "at any time," Instr. 51-201 ¶ 21.3, and the Statement of Trial Results and entry of judgment may be corrected as provided in R.C.M. 1104, 1111(c), and 1112(d). A service member also may request expungement or modification of information in criminal indexing databases. See *United States Air Force Manual 71-102*, 45-46 (2020), https://perma.cc/Z3UY-ZP3H. And like any defendant convicted of a crime that triggers 18 U.S.C. 922's possession prohibition, petitioner may apply for restoration of his firearm rights at an appropriate juncture under 18 U.S.C. 925(c), and may (if still aggrieved) seek to challenge the collateral consequences of his conviction through a stand-alone lawsuit, see, *e.g.*, *Vincent* v. *Bondi*, 127 F.4th 1263, 1264 (10th Cir. 2025) (post-conviction lawsuit seeking a declaration that Section 922(g)(1) violates the Second Amendment as applied to the defendant), cert. denied, No. 24-1155 (Mar. 2, 2026).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
A. TYSEN DUVA
Assistant Attorney General
ANN O'CONNELL ADAMS
Attorney

MAY 2026