

Filed on November 19, 2024

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES**

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**UNITED STATES,**  
*Appellee,*

v.

**DANIEL L. BLOCK,**  
Master Sergeant (E-7),  
United States Air Force,  
*Appellant.*

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Crim. App. Dkt. No. 40466  
USCA Dkt. No. \_\_-\_\_\_\_/AF

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**SUPPLEMENT TO THE PETITION FOR GRANT OF REVIEW**

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## **INDEX**

<b>INDEX.....</b>	<b>i</b>
<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>ISSUES PRESENTED .....</b>	<b>1</b>
<b>STATEMENT OF STATUTORY JURISDICTION.....</b>	<b>2</b>
<b>STATEMENT OF THE CASE.....</b>	<b>2</b>
<b>STATEMENT OF THE FACTS .....</b>	<b>3</b>
<b>REASONS TO GRANT REVIEW .....</b>	<b>5</b>
<b>Standard of Review.....</b>	<b>6</b>
<b>Law and Analysis.....</b>	<b>6</b>
1. The AFCCA had authority to grant appropriate relief for any demonstrated error in post-trial processing occurring after the entry of judgment.....	6
2. Unlike the appellant in <i>Williams</i> , MSgt Block meets the factual predicate to trigger the AFCCA’s review under Article 66(d)(2), UCMJ. ....	9
<b>CONCLUSION.....</b>	<b>12</b>

## **TABLE OF AUTHORITIES**

### **Cases**

#### **Supreme Court of the United States**

<i>Garland v. Range</i> , 144 S. Ct. 2706 (2024).....	5
<i>N.Y. State Rifle &amp; Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022) .....	10

#### **Court of Appeals for the Armed Forces and Court of Military Appeals**

<i>United States v. Hale</i> , 78 M.J. 268 (C.A.A.F. 2019) .....	6
<i>United States v. Harris</i> , 75 M.J. 448 (C.A.A.F. 2016).....	5, 6
<i>United States v. Tardif</i> , 57 M.J. 219 (C.A.A.F. 2002).....	10
<i>United States v. Tovarchavez</i> , 78 M.J. 458 (C.A.A.F. 2019) .....	11
<i>United States v. Williams</i> , __ M.J. __, 2024 CAAF LEXIS 501 (C.A.A.F. 2024) .....	1, 4-10
<i>United States v. Wilson</i> , 76 M.J. 4 (C.A.A.F. 2017).....	6

#### **Service Courts of Criminal Appeals**

<i>United States v. Block</i> , No. ACM 40466 (A.F. Ct. Crim. App. Aug. 29, 2024) (Appendix A) .....	2, 3, 4, 5, 6, 12
<i>United States v. Lepore</i> , 81 M.J. 759 (A.F. Ct. Crim. App. 2021) .....	3, 4, 7
<i>United States v. Vanzant</i> , 84 M.J. 671 (A.F. Ct. Crim. App. 2024) .....	3, 4, 7

### **Statutes and Other Authorities**

18 U.S.C. § 921 .....	8
18 U.S.C. § 922 .....	1, 4, 5, 8, 10
Appellant’s Motion for Reconsideration, <i>United States v. Block</i> , No. ACM 40466 (Sept. 19, 2024) (Appendix B).....	3, 4, 5
Article 60c, UCMJ, 10 U.S.C. § 860c .....	5, 7, 8, 9, 11
Article 66, UCMJ, 10 U.S.C. § 866 .....	1, 2, 4, 5, 7, 9-12
Article 67, UCMJ, 10 U.S.C. § 867 .....	2, 12
Article 131, UCMJ, 10 U.S.C. § 931 .....	2
Article 134, UCMJ, 10 U.S.C. § 934 .....	2
C.A.A.F. R. 21 .....	5
C.A.A.F. R. 34 .....	3
Department of the Air Force Instruction 51-201, <i>Administration of Military Justice</i> (Apr. 14, 2022) (Appendix C) .....	7, 8, 11
Merits Brief, <i>United States v. Block</i> , No. ACM 40466, 2024 CCA LEXIS 323 (A.F. Ct. Crim. App. Aug. 29, 2024) .....	4, 10

Order Granting Review, <i>United States v. Johnson</i> , No. 24-0004/SF (C.A.A.F. Sept. 24, 2024). .....	6
<i>Manual for Courts-Martial, United States</i> (2019 ed.) .....	2
R.C.M. 1111 .....	8

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES**

<b>UNITED STATES,</b>	)	<b>SUPPLEMENT TO THE</b>
<i>Appellee,</i>	)	<b>PETITION FOR GRANT</b>
	)	<b>OF REVIEW</b>
v.	)	
	)	Crim. App. Dkt. No. 40466
<b>DANIEL L. BLOCK,</b>	)	
Master Sergeant (E-7),	)	USCA Dkt. No. ____-____/AF
United States Air Force,	)	
<i>Appellant.</i>	)	November 19, 2024

**ISSUES PRESENTED**

**I. Whether, in light of *United States v. Williams*, \_\_ M.J. \_\_, CAAF LEXIS 501 (C.A.A.F. 2024), the Air Force Court of Criminal Appeals had jurisdiction under Article 66(d)(2), Uniform Code of Military Justice, to provide appropriate relief for the erroneous firearm prohibition on the indorsement to the entry of judgment.**

**II. Whether the United States Court of Appeals for the Armed Forces has jurisdiction and authority to direct the modification of the 18 U.S.C. § 922 prohibition noted on the indorsement to the entry of judgment.**

**III. Whether review by the United States Court of Appeals for the Armed Forces of the 18 U.S.C. § 922 prohibition noted on the indorsement to the entry of judgment would satisfy this Court’s prudential case or controversy doctrines.**

**IV. As applied to Master Sergeant Block, whether 18 U.S.C. § 922 is constitutional in light of recent precedent from the Supreme Court of the United States.**

## **STATEMENT OF STATUTORY JURISDICTION**

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866.<sup>1</sup> This Court has jurisdiction to review this case pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3).

## **STATEMENT OF THE CASE**

On February 28, 2023, a military judge sitting as a general court-martial convicted MSgt Daniel Block, consistent with his pleas, of one specification of obstruction of justice, in violation of Article 131b, UCMJ, 10 U.S.C. § 931b; and one specification of possessing child pornography and one specification of viewing child pornography, in violation of Article 134, UCMJ, 10 U.S.C. § 934. R. at 67; Entry of Judgment (EOJ) (Apr. 10, 2023). The military judge sentenced MSgt Block to be reduced to the grade of E-1, to forfeit all pay and allowances, to be confined for 24 months, and to be dishonorably discharged. R. at 93. The convening authority took no action on the findings and approved the sentence in its entirety. Convening Authority Decision on Action.

At the AFCCA, MSgt Block personally raised whether the firearm bar contained in his record of trial was constitutional as applied to him. *United States v.*

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<sup>1</sup> All citations to the UCMJ or Rules for Courts-Martial (R.C.M.) are to the versions in the *Manual for Courts-Martial, United States* (2019 ed.) (MCM).

*Block*, No. ACM 40466, slip op. at 2 (A.F. Ct. Crim. App. Aug. 29, 2024) (Appendix A). On August 13, 2024, the AFCCA affirmed the findings as correct in law and fact and concluded the firearm issue warranted neither discussion nor relief after citing *United States v. Vanzant*, 84 M.J. 671, 681 (A.F. Ct. Crim. App. 2024), and *United States v. Lepore*, 81 M.J. 759, 763 (A.F. Ct. Crim. App. 2021) (en banc). *Id.*

On September 19, 2024, MSgt Block timely moved for reconsideration on the issue of whether the firearm bar was unconstitutionally applied to him. Appellant's Mot. for Recons. (Appendix B) (including "denial" by court and Government opposition). The AFCCA denied the motion to reconsider on September 30, 2024. *Id.* (showing the AFCCA stamped the motion "denied"); see C.A.A.F. R. 34(a) (computing the time prescribed by statute for filing the petition for grant of review from the final action date of a timely motion for reconsideration).

## **STATEMENT OF FACTS**

MSgt Block pleaded guilty to viewing various images and videos of child pornography on his cellphone and then saving such content onto different electronic devices. R. at 13, 29, 32-33, 44, 47. He also pleaded guilty to obstructing justice; when MSgt Block suspected law enforcement was investigating him for child pornography, he deleted the child pornography from his devices. R. at 13, 22. The military judge accepted MSgt Block's pleas, found him guilty, and sentenced him. R. at 66-67, 93.

After his conviction, the Government determined MSgt Block qualified for a firearms prohibition under 18 U.S.C. § 922 by marking “Yes” on “Firearm Prohibition Triggered” on the Staff Judge Advocate’s (SJA’s) indorsement to the EOJ. EOJ. The SJA’s indorsement was not an attachment listed on the EOJ, but a separate document that became the third page of the EOJ. *Id.*

MSgt Block challenged this prohibition before the AFCCA. Merits Brief, App. A at 1, 3-5. He broadly argued the AFCCA had jurisdiction under Article 66, UCMJ, and asked as the remedy for the AFCCA to “correct the Statement of Trial [STR] results.” *Id.* Although his prayer for relief focused on the STR, his argument and factual analysis also included the EOJ. *Id.* The AFCCA rejected the challenge for lack of jurisdiction and declined to grant relief. Appendix A at 2 (citing *Vanzant*, 84 M.J. at 681; *Lepore*, 81 M.J. at 763).

In his timely motion for reconsideration, MSgt Block argued that the AFCCA had jurisdiction to review the indorsement to the EOJ under Article 66(d)(2), UCMJ, pursuant to *United States v. Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501 (C.A.A.F. 2024). Appendix B. The AFCCA did not reconsider MSgt Block’s case. *Id.*



## REASONS TO GRANT REVIEW

MSgt Block's case involves jurisdictional questions that remain unresolved by the AFCCA and this Court after *Williams*. \_\_ M.J. \_\_, 2024 CAAF LEXIS 501. Unlike the Army, the Air Force completes its final 18 U.S.C. § 922(g) notification after entry of judgment (Article 60c, UCMJ, 10 U.S.C. § 860c). As a result, MSgt Block's case is factually distinct from *Williams*, and the AFCCA had jurisdiction<sup>2</sup> to consider the post-trial processing error in his case under Article 66(d)(2), UCMJ. The AFCCA held it did not have jurisdiction, even though MSgt Block showed a post-trial error occurring after the entry of judgment. Appendix A at 2. MSgt Block also requested reconsideration following *Williams*, which the AFCCA denied. Appendix B. Consequently, the AFCCA's determination that there was no jurisdiction to review this error in post-trial processing conflicts with this Court's decision in *Williams*. *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*14; C.A.A.F. R. 21(b)(5)(B). This Court should grant review to clarify the AFCCA's authority to act under Article 66(d)(2), UCMJ.<sup>3</sup>

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<sup>2</sup> Jurisdiction to review a case has two separate but related parts: first, whether there is jurisdiction over the case, and second, whether there is authority to act. *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*8. The jurisdictional question here concerning the AFCCA is focused on authority to act.

<sup>3</sup> As *Williams* appears to control this issue, *see* Section 1 below, granting and summarily remanding to the AFCCA for proper consideration of the issue would also be appropriate. *See, e.g., Garland v. Range*, 144 S. Ct. 2706 (2024) (summarily granting, vacating, and remanding for further consideration in light of new controlling precedent); *United States v. Harris*, 75 M.J. 448 (C.A.A.F. 2016)

As for this Court's jurisdiction (Issue II), the overall justiciability of the firearm bar (Issue III), and the underlying constitutional issue (Issue IV), those questions remain open after *Williams*. See generally *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501. Moreover, this Court has already granted review of these same issues. Order Granting Review, *United States v. Johnson*, No. 24-0004/SF (C.A.A.F. Sept. 24, 2024). MSgt Block's case should be granted as a trailer case to *Johnson* for resolution of Issues II, III, and IV presented. Further analysis as to why this Court should grant Issue I continues below.

### **Standard of Review**

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Hale*, 78 M.J. 268, 270 (C.A.A.F. 2019); *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017).

### **Law and Analysis<sup>4</sup>**

1. The AFCCA had authority to grant appropriate relief for any demonstrated error in post-trial processing occurring after the entry of judgment.

The AFCCA did not explain its rejection of MSgt Block's raised error. Appendix A at 2. Rather, it cited two cases that state correcting a firearms prohibition is a collateral matter outside the court's review authority because it falls outside the

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(summarily granting and remanding to the service court for consideration of the granted issue).

<sup>4</sup> The analysis herein focuses only on the first issue presented, that the AFCCA had jurisdiction.

“findings and sentence” entered into the record. *Vanzant*, 84 M.J. at 673, 680; *see Lepore*, 81 M.J. at 760 (analyzing an earlier version of Article 66, UCMJ, with the same language). The language in the cited opinions indicates that the lower court only assessed its authority to review and act under Article 66(d)(1), UCMJ. *Id.* Article 66(d)(1), UCMJ, provides, “In any case before the Court of Criminal Appeals under subsection (b), the Court *may act only with respect to the findings and sentence* as entered into the record under section 860c of this title ([A]rticle 60c).” (emphasis added). The citation to *Vanzant* and *Lepore* highlights that the AFCCA did not consider any other basis for jurisdiction in MSgt Block’s case, such as Article 66(d)(2), UCMJ. But Article 66(d)(2), UCMJ, applies at the time the firearm prohibition is documented and distributed during Air Force post-trial processing, as supported by this Court’s analysis in *Williams*. *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*13-14.

By order of the Secretary of the Air Force, the Judge Advocate General of the Air Force published Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* (Apr. 14, 2022) (Appendix C). DAFI 51-201 outlines the applicable procedures for Air Force post-trial processing, including when the EOJ and the indorsement at issue are created. In the Air Force, “after the [EOJ] is signed by the military judge and returned to the servicing legal office, the [SJA] signs and attaches to the [EOJ] a first indorsement, indicating whether . . .

firearm prohibitions are triggered.” DAFI 51-201, at ¶ 20.41. Section 20I of DAFI 51-201 distinguishes the EOJ from the indorsement. *Compare* DAFI 51-201, at ¶ 20.40, *with* DAFI 51-201, at ¶ 20.41.

While the EOJ must include the STR and any “other information” required by the Secretary of the Air Force (R.C.M. 1111(b)), the operative firearm notification is not in the EOJ when it is signed by the military judge. *Compare Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*6, *with* DAFI 51-201, at ¶¶ 20.40.1, 29.33. Rather, the Secretary of the Air Force directs the SJA to separately complete the indorsement with the 18 U.S.C. § 922 notification, which gets incorporated into the EOJ for “final disposition” after Article 60c, UCMJ, action. DAFI 51-201, at ¶¶ 20.41, 29.32, 29.33. The indorsement becomes a part of the EOJ, but it chronologically occurs after the military judge enters the judgment into the record. Even if the indorsement is part of the entry of judgment by operation of R.C.M. 1111(b)(3)(F), the error—the unconstitutional deprivation of Second Amendment rights—still occurs after the entry of judgment. This is because the denial of firearms comes with the distribution of the erroneous prohibition. *See* DAFI 51-201, at ¶¶ 29.33, 29.35.3 (explaining how the prohibition is distributed to law enforcement for compliance with 18 U.S.C. §§ 921-22).

In *Williams*, this Court considered the Army’s post-trial processing procedure where the STR, containing the only firearm bar, was completed by the military judge

and incorporated into the entry of judgment before the military judge signed the judgment. *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*6. Under those circumstances, this Court held that the plain language of Article 66(d)(2), UCMJ, prohibited the Army Court of Criminal Appeals from changing the STR firearm bar notation—since that notation came *before* action under Article 60c, UCMJ. *Id.* at \*14. However, the situation here is different. In the Air Force, the controlling firearm disposition occurs “*after* the judgment was entered into the record,” in accordance with the plain language of Article 66(d)(2), UCMJ. Consequently, based on the Air Force’s unique post-trial processing, the AFCCA has authority to review this post-trial processing error under Article 66(d)(2), UCMJ, if the error is demonstrated by the accused.

2. Unlike the appellant in *Williams*, MSgt Block meets the factual predicate to trigger the AFCCA’s review under Article 66(d)(2), UCMJ.

When analyzing whether Article 66(d)(2), UCMJ, authorized the Army Court of Criminal Appeals to modify the STR firearm notation in *Williams*, this Court relied on the plain language of the statute. *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*13-14. Using the same analysis, here, MSgt Block’s erroneous and unconstitutional firearm prohibition falls squarely within the AFCCA’s review authority under Article 66(d)(2), UCMJ.

First, “the accused demonstrated error.” Article 66(d)(2), UCMJ. In his brief to the AFCCA, MSgt Block demonstrated he was erroneously deprived of his right

to bear arms pursuant to *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 24 (2022). Merits Brief, App. A at 1-3. Unlike in *Williams*, where no such “error” was raised, MSgt Block directly challenged the firearm prohibition, and the AFCCA could have resolved the error by analyzing whether 18 U.S.C. § 922(g) applied to MSgt Block. *Id.* at 2-3.

In personally raising this error, MSgt Block broadly framed the AFCCA’s jurisdiction under Article 66, UCMJ, and sought relief through correction of the STR, similar to the approach in *Williams*. *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*11. However, throughout his briefing, MSgt Block made references to the EOJ, which included the indorsement containing the firearms prohibition. Merits Brief, App. A at 1, 4-5. While the AFCCA could not correct the erroneous firearms bar associated with the STR, it could have corrected the erroneous firearm notation on the indorsement to the EOJ, which was completed after the entry of judgment during post-trial processing. *Williams*, \_\_ M.J. \_\_, 2024 CAAF LEXIS 501, at \*14-15; *see supra* at 7-9 (discussing timing in detail). Or, the AFCCA could have provided other appropriate relief upon reviewing this error. *See, e.g., United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002) (holding the courts of criminal appeals have authority to tailor appropriate remedies to the circumstances of the case).

Despite MSgt Block’s requested remedy at AFCCA, the facts about the firearm prohibition and the issue presented, i.e., the overall “error,” have not

changed. Rather, the source of jurisdiction has been clarified, and unlike the appellant in *Williams*, MSgt Block demonstrated an error that the AFCCA had authority to consider under Article 66(d)(2), UCMJ. *See United States v. Tovarchavez*, 78 M.J. 458, 462 (C.A.A.F. 2019) (“An appellant gets the benefit of changes to the law . . .”).

Second, the error on the indorsement that deprived MSgt Block of his constitutional right to bear arms occurred in the “processing of the court-martial after the judgment was entered into the record under section 860c . . . ([A]rticle 60c).” Article 66(d)(2), UCMJ. If following the plain language of the DAFI, then the SJA’s indorsement was completed after the military judge signed the EOJ, i.e., *after* the military judge entered the judgment into the record under Article 60c, UCMJ. DAFI 51-201, at ¶ 20.41. Alternatively, if the indorsement is part of the EOJ, making it part of the judgment, the distribution of the erroneous prohibition is the error occurring after the entry of judgment. DAFI 51-201, at ¶¶ 29.33, 29.35.3. Either way, nothing in the record proves the final and operative firearm prohibition causing the unconstitutional deprivation of rights came before the entry of judgment; there is no indication that the Government violated its own regulations in completing the EOJ. *Compare* EOJ (showing the military judge signed at 12:56:19 Pacific Time on Apr. 10, 2023), *with* 1st Ind., Entry of Judgment, MSgt Daniel L. Block (Apr. 10, 2023) (showing the SJA signed at 16:04:59 Mountain Time on Apr. 10, 2022,

approximately two hours after the military judge signed the EOJ). Therefore—unlike how the issue was factually raised in *Williams*, i.e., prior to the entry of judgment—here, the error raised occurred after the entry of judgment, satisfying the final triggering criterion under Article 66(d)(2), UCMJ.

Consequently, the AFCCA had jurisdiction under Article 66(d)(2), UCMJ, to decide whether MSgt Block was deprived of his constitutional right to bear arms by virtue of the Air Force’s post-trial processing. As it relates to Issue II, since the AFCCA affirmed the error in the EOJ by concluding “this issue warrants neither discussion nor *relief*,” this Court would have jurisdiction to review and act upon the error in the EOJ under Article 67(c)(1)(B), UCMJ (authorizing this Court to act on a judgment by a military judge affirmed by the AFCCA). Appendix A at 2 (emphasis added).

## CONCLUSION

MSgt Block is a non-violent felon. The Second Amendment does not allow the Government to indiscriminately prohibit him from owning or purchasing a firearm. By noting on the EOJ that 18 U.S.C. § 922 applies to MSgt Block and the distributing that notice to law enforcement entities, the Government permanently barred him from exercising his right to bear arms. Correction of the EOJ would remedy this deprivation of rights by adjudicating the underlying issue of whether 18 U.S.C. § 922 is constitutional as applied to MSgt Block. Both the AFCCA and



this Court have jurisdiction to review and correct this post-trial processing error. Granting review would clarify jurisdiction while also ensuring MSgt Block's constitutional rights are honored.

MSgt Block respectfully requests that this Court grant review.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'S. Castanien', with a long horizontal flourish extending to the right.

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**CERTIFICATE OF FILING AND SERVICE**

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on November 19, 2024, and that a copy was also electronically served on the Air Force Government Trial and Appellate Operations Division at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on the same date.

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**CERTIFICATE OF COMPLIANCE**  
**WITH RULES 21(b) & 37**

This supplement complies with the type-volume limitation of Rules 21(b) because it contains 2,911 words.

This brief complies with the typeface and type-style requirements of Rule 37 because it has been prepared in a proportional typeface using Microsoft Word with Times New Roman 14-point typeface.

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## Appendix A

**UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS**

---

**No. ACM 40466**

---

**UNITED STATES**

*Appellee*

**v.**

**Daniel L. BLOCK**

Master Sergeant (E-7), U.S. Air Force, *Appellant*

---

Appeal from the United States Air Force Trial Judiciary

Decided 29 August 2024

---

*Military Judge:* Matthew P. Stoffel.

*Sentence:* Sentence adjudged 28 February 2023 by GCM convened at Hill Air Force Base, Utah. Sentence entered by military judge on 10 April 2023: Dishonorable discharge, confinement for 24 months, forfeiture of all pay and allowances, and reduction to E-1.

*For Appellant:* Major Spencer R. Nelson, USAF.

*For Appellee:* Colonel Matthew D. Talcott, USAF; Lieutenant Colonel J. Peter Ferrell, USAF; Major Jocelyn Q. Wright, USAF; Captain Kate E. Lee, USAF; Mary Ellen Payne, Esquire.

Before JOHNSON, GRUEN, and WARREN, *Appellate Military Judges*.

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**This is an unpublished opinion and, as such, does not serve as  
precedent under AFCCA Rule of Practice and Procedure 30.4.**

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PER CURIAM:

A military judge sitting as a general court-martial convicted Appellant, in accordance with his pleas and pursuant to a plea agreement, of one specification of obstruction of justice in violation of Article 131b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 931b; and one specification of wrongful possession of child pornography on divers occasions and one specification of

wrongful viewing of child pornography on divers occasions, both in violation of Article 134, UCMJ, 10 U.S.C. § 934.<sup>1</sup> The military judge sentenced Appellant to a dishonorable discharge, confinement for 24 months, forfeiture of all pay and allowances, and reduction to the grade of E-1. The convening authority took no action on the findings and “approve[d] the sentence in its entirety.”

Appellant personally raises one issue on appeal:<sup>2</sup> whether, as applied to Appellant, reference to 18 U.S.C. § 922 in the Statement of Trial Results is unconstitutional where the Government cannot demonstrate that barring his possession of firearms is “consistent with the nation’s historical tradition of firearm regulation”<sup>3</sup> when he was not convicted of a violent offense.

After carefully considering this issue and for the reasons explained in *United States v. Vanzant*, 84 M.J. 671, No. ACM 22004, 2024 CCA LEXIS 215, at \*24 (A.F. Ct. Crim. App. 28 May 2024), and *United States v. Lepore*, 81 M.J. 759, 763 (A.F. Ct. Crim. App. 2021) (en banc), we conclude this issue warrants neither discussion nor relief. See *United States v. Guinn*, 81 M.J. 195, 204 (C.A.A.F. 2021) (citing *United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987)).

The findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d) (*Manual for Courts-Martial, United States* (2024 ed.)). Accordingly, the findings and sentence are **AF-FIRMED**.



FOR THE COURT

*Carol K. Joyce*

CAROL K. JOYCE  
Clerk of the Court

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<sup>1</sup> Unless otherwise indicated, all references to the UCMJ are to the *Manual for Courts-Martial, United States* (2019 ed.).

<sup>2</sup> Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

<sup>3</sup> Citing *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2130 (2022).

## Appendix B

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

*Appellee,*

v.

Master Sergeant (E-7)

**DANIEL L. BLOCK,**

United States Air Force,

*Appellant.*

APPELLANT'S MOTION FOR  
RECONSIDERATION

Before Panel No. 3

No. ACM 40466

19 September 2024

TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 31 of this Court's Rules of Practice and Procedure, Master Sergeant (MSgt) Daniel L. Block, the Appellant, respectfully moves this Court to reconsider its 29 August 2024 decision in his case. *See United States v. Block*, No. ACM 40466, 2024 CCA LEXIS 371 (A.F. Ct. Crim. App. Aug. 29, 2024). MSgt Block provides the following information in accordance with Rule 31.2(a):

1. Undersigned counsel received this Court's decision on 29 August 2024.
2. MSgt Block is seeking reconsideration on an issue he personally raised, whether 18 U.S.C. § 922 is unconstitutional as applied to him when he was not convicted of a violent offense, in light of *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022).<sup>1</sup>
3. The basis for reconsideration is that the Court of Appeals for the Armed Forces (CAAF) decided *United States v. Williams*, \_\_\_ M.J. \_\_\_, 2024 CAAF LEXIS 501 (C.A.A.F. Sept. 5, 2024), after MSgt Block's case was decided by this Court.

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<sup>1</sup> This motion for reconsideration is filed on Issue I, which MSgt Block filed personally, pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). Merits Brief, App. A, *United States v. Block*, No. ACM 40466, 2024 CCA LEXIS 371 (A.F. Ct. Crim. App. Aug. 29, 2024). This motion for reconsideration is not raised personally; MSgt Block has new detailed Article 70, Uniform Code of Military Justice (UCMJ), counsel, who is raising this issue for him based on a change in A.F. Ct. Crim. App. R. 31.2(b).



**DENIED**

**30 SEP 2024**



4. No other court has jurisdiction over this case.

This Court should grant this motion, reconsider its resolution of the issue, and find 18 U.S.C. § 922 does not apply to MSgt Block, remanding the record for correction pursuant to this Court's authority under 10 U.S.C. § 866(d)(2) and Rule for Court Martial (R.C.M.) 1112(d)(2).

## I.

**AS APPLIED TO MASTER SERGEANT BLOCK, THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL BY DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION'S HISTORICAL TRADITION OF FIREARM REGULATION WHEN MASTER SERGEANT BLOCK WAS NOT CONVICTED OF A VIOLENT OFFENSE.**

### Analysis

On 5 September 2024, the CAAF issued *United States v. Williams*, where the CAAF considered whether the Army Court of Criminal Appeals (Army Court) had the authority to alter the military judge's correction to the Statement of Trial Results (STR), which is incorporated into the judgment of the court signed by the military judge. *Williams*, 2024 CAAF LEXIS 501, at \*1-3. In *Williams*, the military judge had erroneously marked on the STR that the appellant's conviction triggered the Lautenberg Amendment, 18 U.S.C. § 922(g), after advising the appellant of the opposite during his guilty plea. *Id.* at \*1-2. Later, in promulgating the judgment, the military judge incorporated and amended the original STR to correct the firearms ban so that 18 U.S.C. § 922(g) was not triggered. *Id.* at \*6. On appeal, the Army Court changed the firearm bar on the STR *back*, to reindicate the appellant was barred from possessing a firearm. *Id.*

The CAAF determined that changing the STR back was an ultra vires act by the Army Court because "the STR is not part of the findings or sentence," but rather "other information"

required by R.C.M. 1101(a)(6). *Id.* at \*12-13. Therefore, the Army Court did not have authority to act pursuant to Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2018),<sup>2</sup> in this way. *Id.*

However, the CAAF then analyzed whether the Army Court had the authority to change the firearm ban under Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2), as an “error . . . in the processing of the court-martial after the judgment was entered into the record.” *Id.* at \*13. The CAAF resolved the issue against the appellant in *Williams* for three reasons related to the unique facts of that case. *Id.* at \*14-15. First, there was no “error” because the military judge corrected any erroneous notation on the STR before signing the judgment. *Id.* at \*14. Thus, by the plain language of the statute, there was no error to consider after the entry of judgment. Second, assuming error, the burden of raising such error was on the accused. *Id.* As the appellant in *Williams* agreed with the military judge’s action in correcting the firearm notation, no error was raised. *Id.* Therefore, the Army Court’s “correction authority” had not been “triggered,” as the appellant never raised the firearm notation as an error. Third, assuming error and assuming the error had been raised, the timing of the military judge’s erroneous notation preceded the entry of judgment; it was on the STR. *Id.* Therefore, based on the plain language of Article 66(d)(2), UCMJ, it was not an error occurring *after* the entry of judgment.

The CAAF did not foreclose properly raising an erroneous firearm notation to the service courts of appeal under Article 66(d)(2), UCMJ, when the error raised occurs *after* the entry of judgment, as in MSgt Block’s case. Unlike the appellant in *Williams*, MSgt Block meets the factual predicate to trigger this Court’s review under Article 66(d)(2), UCMJ.

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<sup>2</sup> The language at issue in Article 66, UCMJ, is not substantively different between the 2018 version analyzed in *Williams* and the version applicable to MSgt Block’s appeal.

First, MSgt Block argued there was an error in his case, that he was erroneously and unconstitutionally deprived of his right to bear arms, in his initial submission to this Court. Merits Brief, App. A at 1, *Block*, No. ACM 40466, 2024 CCA LEXIS 371. Unlike in *Williams*, there is an error to correct upon analyzing whether 18 U.S.C. § 922(g) applies to MSgt Block. *Id.* at 2-3.

Second, with different detailed Article 70, UCMJ, counsel, MSgt Block personally raised and demonstrated an 18 U.S.C. § 922(g) error. Merits Brief, App. A at 1, *Block*, No. ACM 40466, 2024 CCA LEXIS 371. In personally raising this error, he framed this Court’s jurisdiction broadly under Article 66, UCMJ, and sought relief through correction of the STR, because that was how the issue was primarily presented in *Williams*. *Williams*, 2024 CAAF LEXIS 501, at \*11. However, throughout his briefing, MSgt Block made references to the Entry of Judgment (EOJ), which incorporates the First Indorsement noting the firearm ban. Merits Brief, App. A at 1, 4-5, *Block*, No. ACM 40466, 2024 CCA LEXIS 371. Pursuant to *Williams*, under Article 66(d), UCMJ, this Court cannot correct the erroneous firearms bar associated with the STR, but it *can* correct the erroneous firearm notation on the First Indorsement attached to the EOJ, which was completed after the entry of judgment during post-trial processing. *Williams*, 2024 CAAF LEXIS 501, at \*14-15; *see infra* (discussing timing in detail). The facts and issue presented in MSgt Block’s case have not changed; instead, MSgt Block is raising a different basis for jurisdiction and relief based on a change in the law that was previously overlooked. A.F. Ct. Crim. App. R. 31.2(b)(1). This is a valid basis for reconsideration when neither this Court nor MSgt Block had the benefit of *Williams* when MSgt Block’s firearm issue was decided. *Id.* Therefore, unlike the appellant in *Williams*, there is an error raised by MSgt Block for this Court to consider under Article 66(d)(2), UCMJ.

Finally, the error on the First Indorsement erroneously depriving MSgt Block of his constitutional right to a firearm was an error in the “processing of the court-martial after the judgment was entered into the record under section 860(c) . . . (article 60(c)).” Article 66(d)(2),

UCMJ. Under the applicable Air Force regulation, “[a]fter the EOJ is signed by the military judge and returned to the servicing legal office, the [Staff Judge Advocate] signs and attaches to the [EOJ] a first indorsement, indicating whether . . . firearm prohibitions are triggered.” Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice* ¶ 20.41 (Apr. 14, 2022) (emphasis added). The firearm denotation on the First Indorsement that accompanies the entry of judgment into the record of trial explicitly happens *after* the entry of judgment is signed by the military judge pursuant to Article 60(c), UCMJ. *Id.* Additionally, as this First Indorsement is the most recent notification to law enforcement entities about the applicability of 18 U.S.C. § 922 to MSgt Block, it makes sense that this is the document the Court should review for post-trial processing error. *See id.* at ¶¶ 20.42, 29.6, 29.32, 29.33 (dictating when notifications are made through distribution of the EOJ and attachments). Therefore, unlike in the issue addressed in *Williams*, here, the error occurred after the entry of judgment, in accordance with the last triggering criterion under Article 66(d)(2), UCMJ.

This Court’s authority to review the erroneous firearm ban under Article 66(d)(2), UCMJ, is not foreclosed by this Court’s published opinion in *United States v. Vanzant*, 84 M.J. 671, 2024 CCA LEXIS 215 (A.F. Ct. Crim. App. 2024). In *Vanzant*, this Court determined it did not have authority to act on collateral consequences not a part of the findings or sentence under Article 66(d)(1), UCMJ. *Id.* at \*23. (“Article 66(d), UCMJ, provides that a CCA ‘may act only with respect to the findings and sentence as entered into the record under [Article 60c, UCMJ, 10 U.S.C. § 860c].’”). The CAAF agreed with this interpretation. *Williams*, 2024 CAAF LEXIS 501, at \*11-13. However, MSgt Block is asking this Court to review an error in post-trial processing under Article 66(d)(2), UCMJ, which this Court did not analyze in *Vanzant*. *See Vanzant*, 84 M.J. 671, 2024 CCA LEXIS 215, at \*23 (quoting the language of Article 66(d)(1), UCMJ, not (d)(2)). Using the CAAF’s analysis in *Williams*, this Court should reconsider its jurisdiction and the

unconstitutional, post-trial processing, firearms error tied to the facts of MSgt Block's court-martial. To effectuate any remedy, this Court should use its power under R.C.M. 1112(d)(2), which permits this Court to send a defective record back to the military judge for correction, as, ultimately, the First Indorsement is a required component of the EOJ, albeit not part of the "findings" and "sentence," and the error materially affects MSgt Block's constitutional rights. R.C.M. 1111(b)(3)(F); R.C.M. 1112(b)(9); DAFI 51-201, at ¶ 20.41.

MSgt Block respectfully requests this Court address whether 10 U.S.C. § 922 is unconstitutional as applied to him, pursuant to its authority under Article 66(d)(2), UCMJ.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'S. Castanien', with a long horizontal flourish extending to the right.

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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 19 September 2024.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'S. Castanien', with a long horizontal flourish extending to the right.

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**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b> <i>Appellee,</i>	)	UNITED STATES' OPPOSITION
	)	TO APPELLANT'S MOTION
	)	FOR RECONSIDERATION
	)	
v.	)	Before Panel No. 3
	)	
Master Sergeant (E-7)	)	No. ACM 40466
<b>DANIEL L. BLOCK</b>	)	
United States Air Force	)	26 September 2024
<i>Appellant.</i>	)	

**TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23(c) and 23.2 of this Court's Rules of Practice and Procedure, the United States respectfully requests this Honorable Court deny Appellant's Motion for Reconsideration, dated 19 September 2024.

**Standard of Review**

When reviewing a motion for reconsideration, this Court's rules state:

Ordinarily, reconsideration will not be granted without a showing that one of the following grounds exists:

- (1) A material legal or factual matter was overlooked or misapplied in the decision;
- (2) A change in the law occurred after the case was submitted and was overlooked or misapplied by the Court;
- (3) The decision conflicts with a decision of the Supreme Court of the United States, the CAAF, another service court of criminal appeals, or this Court; or
- (4) New information is received that raises a substantial issue as to the mental responsibility of the accused at the time of the offense or the accused's mental capacity to stand trial.

Air Force Court of Criminal Appeals, Rules of Practice and Procedure, Rule 31. When evaluating a motion for reconsideration, this Court should consider whether Petitioner has shown a “manifest error of law,” which is generally required for a reconsideration motion. Pryce v. Scism, 477 Fed. Appx. 867, 869 (3rd Cir. 2012).

### **Law**

This 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[.]” 10 U.S.C. § 866 (emphasis added). The military judge enters the court-martial judgment into the record via the Entry of Judgment (EOJ). 10 U.S.C. § 860c. The EOJ includes the statement of trial results (STR). *Id.* The STR contains: (1) “each plea and finding;” (2) “the sentence, if any; and” (3) “such other information as the President may prescribe by regulation.” 10 U.S.C. § 860. The President prescribed that “[a]ny additional information directed by the military judge or required under regulations prescribed by the Secretary concerned” may be added to the STR. R.C.M. 1101(a)(6). An annotation on the STR notifying the Appellant of an 18 U.S.C. § 922 firearms prohibition constituted “other information” as required by R.C.M. 1101(a)(6). United States v. Williams, 2024 CAAF LEXIS 501, \*12-13 (C.A.A.F. 5 September 2024).

Following the President’s instructions in R.C.M. 1101(a)(6), the Secretary of the Air Force required a First Indorsement to be attached to the STR. Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, para. 13.3.3. (dated 18 January 2019). On the STR, the SJA must annotate whether “firearm prohibitions are triggered.” *Id.* “In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 . . .



and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA.” DAFI 51-201, para. 15.31.

### **Analysis**

Reconsideration is unnecessary in this case. This Court did not overlook or misapply Article 66(d)(2), and Williams did nothing to change the law with respect to Article 66(d)(2). 2024 CAAF LEXIS 501. Article 66 did not change between Appellant’s submission of his Grosteфон<sup>1</sup> issue and the filing of this motion for reconsideration. This Court summarily denied Appellant’s claim that 18 U.S.C. § 922 is unconstitutional as applied to him. United States v. Block, 2024 CCA LEXIS 371 (A.F. Ct. Crim. App. 29 August 2024). This Court stated, “The findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred.” Block, 2024 CCA LEXIS 371 (*citing* Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d) (Manual for Courts-Martial, United States (2024 ed.)). Appellant never asked for Article 66(d)(2) relief, which CAAF said is a prerequisite for a CCA to grant relief. Williams, 2024 CAAF LEXIS 501. There is no basis for granting reconsideration when Appellant did not request relief the first time around and, therefore there was nothing that this Court could have overlooked. This is especially true considering that relief under Article 66(d)(2) is discretionary – “the Court *may* provide appropriate relief if the accused demonstrates error.” 10 U.S.C. 866(d)(1). This Court’s decision did not conflict with a decision of our superior courts or sister services. Appellant’s motion for reconsideration should not be granted because it does not meet the requirements set out by this Court for such relief.

Even if this Court reconsiders its opinion, Article 66(d)(2) does not apply to Appellant’s case because the 18 U.S.C. § 922 annotation on the first indorsement of the STR and

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<sup>1</sup> United States v. Grosteфон, 12 M.J. 431 (C.M.A. 1982).

incorporated into the EOJ was neither an error nor did it occur after the judgment was entered on the record. “Article 66(d)(2), UCMJ, only authorizes a [Court of Criminal Appeals] to provide relief when there has been an ‘error or excessive delay in the processing of the court-martial.’” United States v. Williams, 2024 CAAF LEXIS 501, \*14 (C.A.A.F. 5 September 2024). In Williams, the Court of Appeals for the Armed Forces (CAAF) pointed to three statutory conditions that must be met before a Court of Criminal Appeals (CCA) may review a post-trial processing error under Article 66(d)(2). Id. at \*14. First, an error must have occurred. Id. Second, an appellant must raise a post-trial processing error with the CCA. Id. Third, the error must have occurred after the judgment was entered. Id.

Appellant argues these three requirements are unique to the facts in Williams. (*Appellant’s Motion for Reconsideration*, dated 19 September 2024 at 3). But they are not. The three conditions CAAF listed in the opinion trigger a CCA’s review under Article 66(d)(2) in any case. The Court never limited the test to the specific facts in Williams. Instead, the Court used the language of the statute to identify the three triggers required for Article 66(d)(2) review by a CCA. Then in separate sentences the Court applied the facts of Williams to the rule they articulated. The Court laid out the three triggers and said:

First, Article 66(d)(2), UCMJ, only authorizes a CCA to provide relief when there has been an “error or excessive delay in the processing of the court-martial.”

...

Second, even if there was an error, Article 66(d)(2), UCMJ, places the burden on the accused to raise the issue before the CCA.

...

Finally, even assuming that there was an error and that Appellant properly raised the issue, Article 66(d)(2), UCMJ, only applies to

errors taking place “after the judgment was entered into the record.”

Williams, 2024 CAAF LEXIS 501, \*14. Appellant must meet all three conditions to trigger Article 66(d)(2). Id. In this case, Appellant does not meet these conditions because the § 922 annotation occurred as part of the judgment that was entered into the record, and the § 922 annotation was not an error.

***A. The § 922 annotation was entered into the record before the judgment of the court was entered via the EOJ.***

The 18 U.S.C. § 922 annotation on the first indorsement of the STR is attached to the STR as “other information” under R.C.M. 1101(a)(6), and then both the other information and the STR are entered into the record. 10 U.S.C. § 860(1)(C). Then the EOJ is entered into the record – after the STR. The EOJ is “the judgment of the court” cited in Article 66(d)(2).

*Compare* 10 U.S.C. § 866 *with* 10 U.S.C. § 860c. Because the STR and the first indorsement are incorporated into the EOJ before the judgment is entered into the record under Article 60c, the § 922 annotation on the first endorsement is not an error occurring “*after* the judgment was entered into the record.” 10 U.S.C. § 866 (emphasis added). They are entered into the record again and simultaneously with the EOJ. Because they are entered again simultaneously with the judgment of the court via the EOJ they are not errors occurring after the judgment is entered into the record. 10 U.S.C. § 860c. Thus, Article 66(d)(2) does not grant this Court jurisdiction to review § 922 annotation on either the STR or the EOJ.

Appellant argues:

Pursuant to Williams, under Article 66(d), UCMJ, this Court cannot correct the erroneous firearms bar associated with the STR, but it can correct the erroneous firearm notation on the First Indorsement attached to the EOJ, which was completed after the entry of judgment during post-trial processing.

(Appellant's Motion for Reconsideration at 3). But Appellant's argument fails because it confuses which document in the record constitutes the judgment of the court. The judgment of the court is the EOJ. And the § 922 annotation occurred when it was attached to the STR, before the EOJ was entered into the record, and then it was entered again simultaneously with the EOJ. The first indorsement to the EOJ merely repeats what is in the STR. Also, under R.C.M. 1111(b)(3)(F) the first indorsement is part of the EOJ itself, since it is "additional" information required by DAFI 51-201, para. 13.53.3.1. Thus, the information in the first indorsement cannot be an error occurring "after the judgment was entered," and it is not a correction this Court has authority to make under Article 66(d)(2) even if it was erroneous – which as discussed below it was not.

***B. The § 922 annotation was not an error because it accurately notified Appellant that his conviction triggered the firearms prohibition under federal law.***

The 18 U.S.C. § 922 annotation on the first indorsement of the STR and incorporated into the EOJ was not an error because it accurately stated that the firearm prohibition applied to Appellant in accordance with federal law. "Persons convicted of a crime punishable by imprisonment for a term exceeding one year" are subject to the federal firearm prohibition. DAFI 51-201, para. 15.28.1.; *see also* 18 U.S.C. §922(g)(1). For the crimes to which Appellant pleaded guilty, he faced, *inter alia*, a maximum of 25 years in confinement and a dishonorable discharge. (R. at 53.) The military judge convicted Appellant of these offenses and sentenced Appellant to reduction in grade to E-1, total forfeitures, confinement for 24 months, and a dishonorable discharge. (*Entry of Judgement*, dated 10 April 2023, ROT, Vol. 1.). Appellant's convictions triggered the firearm prohibition under 18 U.S.C. § 922. The first indorsement to the STR that was incorporated into the EOJ included the following annotation: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (Id.). The first indorsement to the STR accurately

reflected that per federal law, Appellant cannot possess a firearm. 18 U.S.C. § 922(g). The annotation was not erroneous.

The government maintains that 18 U.S.C. § 922 is a constitutional limitation on a felon's ability to possess a firearm, and the government rests on its answer brief to address Appellant's arguments about the constitutionality of 18 U.S.C. § 922.

Finally, this Court's authority to correct errors under Article 66(d)(2) is discretionary, since the statute states that the Court of Criminal Appeals "*may* provide appropriate relief." Any relief that this Court could grant under Article 66(d)(2) would be a pyrrhic victory. Even if this Court had authority to remove the firearms prohibition annotation from the first indorsement to EOJ (*Entry of Judgment*, ROT Vol. 1 at 3), it could not remove the firearms annotation from the STR that was incorporated into the EOJ (*Entry of Judgment*, ROT Vol. 1, Attach. at 3) because that annotation on the STR occurred before the EOJ. Thus, Appellant would remain in the same situation he is in now – having a firearms prohibition annotated on the EOJ. Since this Court's intervention under Article 66(d)(2) would not provide meaningful relief, this Court should decline to exercise such discretion.

Reconsideration is unnecessary in this case. This Court did not overlook or misapply Article 66(d)(2), and Congress did not alter Article 66 between Appellant's submission of his Groستefon issue and Appellant's motion for reconsideration. Article 66(d)(2) does not grant this Court authority to correct the STR or EOJ in this case because the § 922 annotation is not an error that occurred "after the judgment was entered into the record."

## **CONCLUSION**

The United States opposes Appellant's motion for reconsideration of this Court's decision in the above captioned case. For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's motion for reconsideration.

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JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
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A handwritten signature in black ink, appearing to read "Mary Ellen Payne".

MARY ELLEN PAYNE  
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## **CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 26 September 2024.



JOCELYN Q. WRIGHT, Maj, USAF  
Appellate Government Counsel  
Government Trial and Appellate Operations Division  
Military Justice and Discipline Directorate  
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## Appendix C



is earlier, via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

**20.38.2. 24 Hour Memorandum.** If the EoJ is published more than 14 days after the sentence is announced, the SJA of the office that prosecuted the case must send a memorandum within 24 hours after the EoJ via email to the recipients listed on the template memorandum located on the VMJD. If any portion of the punishment is deferred, suspended, set aside, waived, or disapproved, the memorandum must include the terms. A template memorandum can be found on the VMJD.

***Section 20I—EoJ (R.C.M. 1111; Article 60c, UCMJ).***

**20.39. General Provision.** The EoJ reflects the results of the court-martial after all post-trial actions, rulings, or orders, and serves to terminate trial proceedings and initiate appellate proceedings. The EoJ must be completed in all GCMs and SPCMs in which an accused was arraigned, regardless of the final outcome of the case. For post-trial processing in an SCM, see **Section 23F**. In any case in which an accused was arraigned and the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, an EoJ must be completed (to include the first indorsement) when the court terminates. For cases resulting in a finding of not guilty by reason of lack of mental responsibility, the EoJ must be completed after the subsequent hearing required by R.C.M. 1111 (e)(1) and R.C.M. 1105.

**20.40. Preparing the EoJ.**

**20.40.1. Minimum Contents.** Following receipt of the CADAM and issuance of any other post-trial rulings or orders, the military judge must ensure an EoJ is prepared. **(T-0).** Military judges should wait five days after receipt of the CADAM to sign the EoJ. This ensures parties have five days to motion the military judge to correct an error in the CADAM in accordance with R.C.M. 1104 (b)(2)(B). The EoJ must include the contents listed in R.C.M. 1111(b), and the STR must be included as an attachment. **(T-0).** Practitioners must use the format and checklists for the EoJ that is posted on the VMJD.

**20.40.2. Expurgated and Unexpurgated Copies of the EoJ.** In cases with both an expurgated and unexpurgated Statement of Trial Results, both an expurgated and unexpurgated EoJ must be prepared and signed by the military judge. In arraigned cases in which the court-martial ended in a full acquittal, mistrial, dismissal of all charges, or is otherwise terminated without findings, refer to **paragraph 20.8** to determine whether an expurgated EoJ is required and the distribution requirements for expurgated and unexpurgated copies.

**20.41. First Indorsement to the EoJ.** After the EoJ is signed by the military judge and returned to the servicing legal office, the SJA signs and attaches to the EoJ a first indorsement, indicating whether the following criteria are met: DNA processing is required; the accused has been convicted of a crime of domestic violence under 18 U.S.C. 922(g)(9); criminal history record indexing is required under DoDI 5505.11; firearm prohibitions are triggered; and/or sex offender notification is required. See **Chapter 29** for further information on this requirement. Templates are located on the VMJD. The first indorsement is distributed with the EoJ. **Note:** This requirement is not delegable. Only the SJA or other judge advocate acting as the SJA may sign the

first indorsement. In the latter case, the person signing the first indorsement indicates “Acting as the Staff Judge Advocate” in the signature block.

**20.42. Distributing the EoJ.** The EoJ and first indorsement must be distributed in accordance with the STR/EoJ Distribution List on the VMJD within five duty days of completion.

### ***Section 20J—Post-Trial Confinement***

**20.43. Entry into Post-Trial Confinement.** Sentences to confinement run from the date adjudged, except when suspended or deferred by the convening authority. Unless limited by a commander in the accused’s chain of command, the authority to order post-trial confinement is delegated to the trial counsel or assistant trial counsel. See R.C.M. 1102(b)(2). The DD Form 2707, *Confinement Order*, with original signatures goes with the accused and is used to enter an accused into post-trial confinement.

### **20.44. Processing the DD Form 2707.**

20.44.1. When a court-martial sentence includes confinement, the legal office should prepare the top portion of the DD Form 2707. Only list the offenses of which the accused was found guilty. The person directing confinement, typically the trial counsel, fills out block 7. The SJA fills out block 8 as the officer conducting a legal review and approval. The same person cannot sign both block 7 and block 8. Before signing the legal review, the SJA should ensure the form is properly completed and the individual directing confinement actually has authority to direct confinement.

20.44.2. Security Forces personnel receipt for the prisoner by completing and signing item 11 of the DD Form 2707. Security Forces personnel ensure medical personnel complete items 9 and 10. A completed copy of the DD Form 2707 is returned to the legal office, and the legal office includes the copy in the ROT. Security Forces retains the original DD Form 2707 for inclusion in the prisoner’s Correctional Treatment File.

20.44.3. If an accused is in pretrial confinement, confinement facilities require an updated DD Form 2707 for post-trial confinement.

20.44.4. Failure to comply with these procedural processes does not invalidate or prevent post-trial confinement or the receipt of prisoners. See Articles 11 and 13, UCMJ.

**20.45. Effect of Pretrial Confinement.** Under certain circumstances, an accused receives day-for-day credit for any pretrial confinement served in military, civilian (at the request of the military), or foreign confinement facilities, for which the accused has not received credit against any other sentence. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984); *United States v. Murray*, 43 M.J. 507 (AFCCA 1995); and *United States v. Pinson*, 54 M.J. 692 (AFCCA 2001). An accused may also be awarded judicially ordered credit for restriction tantamount to confinement, prior NJP for the same offense, violations of R.C.M. 305, or violations of Articles 12 or 13, UCMJ. See e.g., *United States v. Pierce*, 27 M.J. 367 (C.M.A. 1989).

20.45.1. When a military judge directs credit for illegal pretrial confinement (violations of Articles 12 or 13, UCMJ, or R.C.M. 305), the military judge should ensure credit is listed on the STR and EoJ.

20.45.2. Any credit for pretrial confinement should be clearly reflected on the STR, EoJ and DD Form 2707, along with the source of each portion of credit and total days of credit awarded.

## Chapter 29

### SEX OFFENDER NOTIFICATION, CRIMINAL INDEXING AND DNA COLLECTION

#### *Section 29A—Sex Offender Notification*

**29.1. General Provision.** If the member has been convicted of certain “qualifying offenses” potentially requiring sex offender registration the DAF is required to notify federal, state, and local officials. **(T-0).** As noted in the STR/EoJ Distribution List on the VMJD, a copy of the STR and EoJ, to include attachments and the first indorsements, including any placement of the accused on excess or appellate leave status, must be distributed to the AFSFC, [afcorrections.appellateleave@us.af.mil](mailto:afcorrections.appellateleave@us.af.mil), and DAF-CJIC, [daf-cjic@us.af.mil](mailto:daf-cjic@us.af.mil).

**29.2. Qualifying Offenses.** See DoDI 1325.07 for a list of offenses which require DAF notification to federal, state, and local officials.

29.2.1. Federal, state and local governments may require an individual to register as a sex offender for offenses that are not included on this list; therefore, this list identifies offenses for which notification is required by the DAF but is not inclusive of all offenses that trigger sex offender registration.

29.2.2. When a question arises whether a conviction triggers notification requirements, SJAs should seek guidance from a superior command level legal office. Questions about whether an offense triggers notification requirements may be directed to the DAF-CJIC Legal Advisor (HQ AFOSI/JA)

**29.3. Notification Requirement.** The DAF must notify federal, state, and local officials when a DAF member is convicted of a qualifying offense at GCM or SPCM. This requirement applies regardless of whether or not the individual is sentenced to confinement. See DoDI 1325.07, and AFMAN 31-115, Vol 1. The DAF executes this requirement via AF confinement officer/NCO/liaison officer notification to the relevant jurisdictions using the DD Form 2791, *Notice of Release/Acknowledgement of Convicted Sex Offender Registration Requirements*. See AFMAN 71-102, Chapter 3.

#### **29.4. Timing of Notification.**

29.4.1. In cases where the member is sentenced to and must serve post-trial confinement, the notification must be made prior to release from confinement. **(T-0). Note:** The member may not be held beyond the scheduled release date for purposes of making the required notifications. This notification is accomplished by the security forces confinement officer, or designee responsible for custody of the inmate, in accordance with the requirements detailed in AFMAN 31-115, Vol 1; AFMAN 71-102; and DoDI 5525.20, *Registered Sex Offender (RSO) Management in Department of Defense*. **(T-0).**

29.4.2. In cases where the offender will not serve post-trial confinement either because (1) no confinement was adjudged, or (2) confinement credit exceeds adjudged confinement, the SJA must notify the servicing confinement NCO/officer or SFS/CC in writing within 24 hours of conviction. Once informed by the SJA that the member was convicted of a qualifying offense, the confinement officer or SFS/CC ensures the notifications are made in accordance with AFMAN 71-102, AFMAN 31-115V1, and DoDI 5525.20.

**29.5. Legal Office Responsibilities.** SJAs are not responsible for directly notifying federal, state and local law enforcement of qualifying convictions. However, SJAs must ensure their support responsibilities are accomplished in order to ensure the DAF is meeting its obligations under federal law and DoD policy. SJAs facilitate the notification requirement in two ways: (1) completion and distribution of post-trial paperwork in accordance with this instruction and the STR/EoJ Distribution List on the VMJD; and (2) notification of the installation confinement officer/NCO in cases where the offender is convicted but not required to serve post-trial confinement, in accordance with this instruction. See [paragraph 29.6](#) and [paragraph 29.7](#) and AFMAN 71-102, Chapter 3.

**29.6. STR and EoJ.** If a member is convicted of a qualifying offense referred to trial by general or special court-martial on or after 1 January 2019, the appropriate box must be initialed on the first indorsement of the STRs and the EoJ by the SJA. The first indorsement format, and guidance for completion are located on the VMJD.

**29.7. Notification to the Installation Confinement Officer/NCO.** In cases where the member was convicted of a qualifying offense at a general or special court-martial but no post-trial confinement will be served, the SJA must notify, in writing, the confinement officer (or SFS/CC if no confinement officer/NCO is at that installation) of the conviction and sentence within 24 hours of announcement of the verdict. The corrections officer, or the SFS/CC, as appropriate, ensures that the notifications required in AFMAN 31-115, Vol 1 and AFMAN 71-102 are made.

**29.8. Convictions by a Host Country.** Service members, military dependents, DoD contractors, and DoD civilians can be convicted of a sex offense outside normal DoD channels by the host nation while assigned overseas. When compliance with [Section 29A](#) is required in these cases, the SJA notifies the confinement officer or SFS/CC, as required. It is the SJA's responsibility to ensure the offender completes their portion of the DD Form 2791, or equivalent document, upon release from the host nation. The DD Form 2791 and copies of the ROT must be provided to the appropriate federal, state, and local law enforcement in accordance with [paragraph 29.3](#) and [paragraph 29.4](#), and DoDI 1325.07.

***Section 29B—Criminal History Record Information (CHRI) and Fingerprint Collection and Submission (28 U.S.C. § 534, Acquisition, preservation, and exchange of identification records and information; appointment of officials; 28 C.F.R. §§ 20.30, et seq., Federal Systems and Exchange of Criminal History Record Information; DoDI 5505.11)***

**29.9. General Provision.** The DAF, through OSI and Security Forces, submits offender CHRI and fingerprints to the FBI when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See AFMAN 71-102; DoDI 5505.11; 28 C.F.R. §§ 20.30, et seq.; and 28 U.S.C. § 534. Such data is submitted to and maintained in the Interstate Identification Index (III), maintained as part of the FBI's National Crime Information Center (NCIC).

**29.10. Criminal History Record Information.** CHRI reported in accordance with DoDI 5505.11 and AFMAN 71-102 consists of identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP; administrative action; or administrative discharge).

**29.11. Identified Individuals.**

29.11.1. The DAF submits CHRI and fingerprints on any military member or civilian investigated by a DAF law enforcement agency (OSI or Security Forces) when a probable cause determination has been made that the member committed a qualifying offense.

29.11.2. The DAF submits criminal history data for military service members, military dependents, DoD employees, and contractors investigated by foreign law enforcement organizations for offenses equivalent to those described as qualifying offenses in AFMAN 71-102 and DoDI 5505.1 when a probable cause determination has been made that the member committed an equivalent offense.

**29.12. Disposition Data.** The DAF, through DAF-CJIC, OSI and Security Forces, is responsible for updating disposition data for any qualifying offense for which there was probable cause. This disposition data merely states what the ultimate disposition of any action (or no action) taken was regarding each qualifying offense. The disposition includes no action, acquittals, convictions, sentencing, NJP, certain administrative actions, and certain types of discharge. Failure to comply with this section will result in inaccurate disposition data, which can have adverse impacts on individuals lawfully indexed in III.

**29.13. Qualifying Offenses.** Qualifying offenses for fingerprinting requirements constitute either (1) serious offenses; or (2) non-serious offenses accompanied by a serious offense. See 28 CFR. 20.32. A list of offenses that, unless accompanied by a serious offense, do not require submission of data to III is located in AFMAN 71-102, Attachment 5.

**29.14. Military Protective Orders.** Issuance of an MPO also triggers a requirement for indexing in NCIC. See [paragraph 29.39](#) and AFMAN 71-102; 10 U.S.C. § 1567a, *Mandatory notification of issuance of military protective order to civilian law enforcement*.

**29.15. Qualifying Offenses Investigated by Commander Directed Investigation (CDI).** If any qualifying offense was investigated via CDI or inquiry and is subsequently preferred to trial by SPCM or GCM, then CHRI and fingerprints must be submitted to III in accordance with AFMAN 71-102 and DoDI 5505.11. SJAs must ensure they advise commanders as to the requirement to consult with SFS and OSI to obtain and forward CHRI and fingerprints in accordance with that mandate. **Note:** If charges are not preferred, then CHRI and fingerprints are not submitted to III; however, if charges are preferred and later withdrawn, CHRI and fingerprints must be submitted. **(T-0).**

**29.16. Probable Cause Requirement.** Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. See AFMAN 71-102; DoDI 5505.11. The collection of fingerprints under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose fingerprints are being collected.

**29.17. SJA Coordination Requirement.** The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**



**29.18. Process for Submission of Criminal History Data.** After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data in accordance with AFMAN 71-102 and DoDI 5505.11.

**29.19. Legal Office Final Disposition Requirement.**

29.19.1. The final disposition (e.g., conviction at GCM or SPCM, acquittal, dismissal of charges, conviction of a lesser included offense, sentence data, nonjudicial punishment, no action) is submitted by OSI or Security Forces for each qualifying offense reported in III or NCIC. OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). If an accused was arraigned at a court-martial, the final disposition is memorialized on the STR and EoJ. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.19.2. The required format for the first indorsement is located on the VMJD.

29.19.3. The servicing legal office will provide disposition documentation to the local Security Forces, OSI, and DAF-CJIC within five duty days of completion of the documents discussed in paragraphs [29.19.4-29.19.7](#).

29.19.4. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ must be distributed to the local DAF investigative agency that was responsible for the case (e.g., OSI or Security Forces) and DAF-CJIC within five duty days of completion of the EoJ.

29.19.5. For information regarding final disposition where the final disposition consists of NJP, see DAFI 51-202.

29.19.6. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to the local OSI detachment and DAF-CJIC in accordance with [paragraph 10.3.2](#)  
**Note:** Do not forward the sexual assault legal review, only the convening authority notification memorandum.

29.19.7. For all other final dispositions which must be submitted in accordance with [Section 29E](#), AFMAN 71-102, and DoDI 5505.11, the SJA must ensure disposition data is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

**29.20. Expungement of Criminal History Data and Fingerprints.** Expungement requests are processed in accordance with guidance promulgated in AFMAN 71-102.

***Section 29C—DNA Collection (10 U.S.C. §***

***1565; DoDI 5505.14, DNA Collection and Submission Requirements for Law Enforcement)***

**29.21. General Provision.** The DAF, through OSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Index System (CODIS), through the U.S. Army Criminal Investigations Laboratory (USACIL), when fingerprints are collected pursuant to DoDI 5505.11. **(T-0).** See DoDI 5505.14; 10 U.S.C. 1565; 34 U.S.C. §

40702, *Collection and use of DNA identification information from certain federal offenders*; 28 C.F.R. § 28.12, *Collection of DNA samples*.

**29.22. Qualifying Offenses.** DNA collection and submission is required when fingerprints are collected pursuant to DoDI 5505.11. DNA is not collected or submitted for the non-serious offenses enumerated in AFMAN 71-102, Attachment 5 unless they are accompanied by a serious offense requiring fingerprint collection in accordance with DoDI 5505.11.

**29.23. Probable Cause Requirement.** DNA collection occurs only where there is probable cause to believe that a qualifying offense has been committed and that the person identified committed it. The collection of DNA under this paragraph is administrative in nature and does not require a search authorization or consent of the person whose DNA is being collected.

**29.24. SJA Coordination Requirement.** The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel prior to submission of DNA for inclusion in CODIS in accordance with AFMAN 71-102. The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).**

**29.25. Timing of Collection and Forwarding.** OSI, Security Forces and Commanders (through collection by Security Forces) collect and expeditiously forward DNA in accordance with the procedures in DoDI 5505.14 and AFMAN 71-102. If not previously submitted to USACIL, the appropriate DAF law enforcement agency (i.e., OSI or Security Forces) will collect and submit DNA samples from service members: against whom court-martial charges are preferred in accordance with RCM 307 of the MCM; ordered into pretrial confinement after the completion of the commander's 72-hour memorandum required by RCM 305(h)(2)(C) of the MCM; and convicted by general or special court-martial.

**29.26. STR and EoJ.** In cases where specifications alleging qualifying offenses were referred to trial on or after 1 January 2019 and the accused is found guilty of one or more qualifying offenses, the appropriate box must be completed on the first indorsement of the STR and EoJ by the SJA.

**29.27. Final Disposition Requirement.** As DNA may be forwarded to USACIL at various times during the investigation or prosecution of a case, final disposition of court-martial charges must be forwarded to OSI and Security Forces to ensure DNA is appropriately handled.

29.27.1. The final disposition is memorialized on the following forms: STR and EoJ, whichever is applicable. A first indorsement signed by the SJA must accompany the STR and EoJ.

29.27.2. Formats for the STR, EoJ, and first indorsement are located on the VMJD.

29.27.3. In cases where the allegations involve offenses listed in paragraphs [10.2.1.1-10.2.1.3](#), and the convening authority decides not to go forward to trial, the GCMCA review must be forwarded to OSI in accordance with [paragraph 29.19.6](#).

29.27.4. For all other dispositions, the SJA must ensure disposition data for qualifying offenses is provided to ensure timely and accurate inclusion of final disposition data. Disposition documentation must be distributed to the local OSI detachment, Security Forces and DAF-CJIC within five duty days of completion of the final disposition. See [Section 29E](#) for further distribution guidance.

**29.28. Expungement of DNA.** DoD expungement requests are processed in accordance with guidelines promulgated in AFMAN 71-102 and DoDI 5505.14.

***Section 29D—Possession or Purchase of Firearms Prohibited (18 U.S.C. §***

***921-922, Definitions; 27 C.F.R. § 478.11)***

**29.29. General Provision.** 18 U.S.C. § 922, *Unlawful acts*, prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) prohibits any person who fits within specified prohibited categories from possessing a firearm. This includes the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). Commanders may waive this prohibition for members of the Armed Forces for purposes of carrying out their official duties, unless the conviction is for a misdemeanor crime of domestic violence or felony crime of domestic violence, prohibited under 18 U.S.C. §§ 922(g)(9) and 922 (g)(1), respectively, as applied by DoDI 6400.06. For further guidance, see AFMAN 71-102. Persons who are prohibited from purchase, possession, or receipt of a firearm are indexed in the National Instant Background Check System (NICS).

**29.30. Categories of Prohibition (18 U.S.C. §§ 922(g), 922(n); 27 C.F.R. § 478.11; AFMAN 71-102, Chapter 4).**

29.30.1. Persons convicted of a crime punishable by imprisonment for a term exceeding one year.

29.30.1.1. If a service member is convicted at a GCM of a crime for which the maximum punishment exceeds a period of one year, this prohibition is triggered regardless of the term of confinement adjudged or approved. **Note:** 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.

29.30.1.2. If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. 18 U.S.C. § 922(g)(1).

29.30.2. Fugitives from justice. 18 U.S.C. § 922(g)(12).

29.30.3. Unlawful users or persons addicted to any controlled substance as defined in 21 U.S.C. § 802, *Definitions*. See 18 U.S.C. § 922(g)(3) and 27 C.F.R. 478.11.

29.30.3.1. This prohibition is triggered where a person who uses a controlled substance has lost the power of self-control with reference to the use of a controlled substance or where a person is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. See 27 C.F.R. 478.11.

29.30.3.2. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within



the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. 27 C.F.R. 478.11.

29.30.3.3. For a current or former member of the Armed Forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, NJP, or an administrative discharge based on drug use or drug rehabilitation failure. 27 C.F.R. 478.11.

29.30.3.4. Qualifying Prohibitors. See AFMAN 71-102, Chapter 4, for additional information on drug offenses and admissions that qualify for prohibition under 18 USC 922(g)(3).

29.30.4. Any person adjudicated as a mental defective or who has been committed to a mental institution.

29.30.4.1. If a service member is found incompetent to stand trial or not guilty by reason of lack of mental responsibility pursuant to Articles 50a or 76b, UCMJ, this prohibition may be triggered. 18 U.S.C. § 922(g)(4).

29.30.4.2. SJAs should ensure commanders are aware of the requirement to notify DAF-CJIC when a service member is declared mentally incompetent for pay matters by an appointed military medical board. See AFMAN 71-102, Chapter 4.

29.30.4.3. SJAs should ensure commanders are aware of the requirement to notify installation law enforcement in the event any of their personnel, military or civilian, are committed to a mental health institution through the formal commitment process. For further information, see AFMAN 71-102; 18 U.S.C. § 922; 27 C.F.R. 478.11.

29.30.5. Persons who have been discharged from the Armed Forces under dishonorable conditions. 18 U.S.C. § 922(g)(6). This condition is memorialized on the STR and EoJ, which must be distributed in accordance with the STR/EoJ Distribution List on the VMJD. **Note:** This prohibition does not take effect until after the discharge is executed, but no additional notification must be made to the individual at that time. See **paragraph 29.33.2**. The original notification via AF Form 177, *Notification of Qualification for Prohibition of Firearms, Ammunition, and Explosives*, and subsequent service of the Certification of Final Review or Final Order, as applicable, operate as notice to the individual.

29.30.6. Persons who have renounced their United States citizenship. 18 U.S.C. § 922(g)(7).

29.30.7. Persons convicted of a crime of misdemeanor domestic violence (the “Lautenberg Amendment”) at a GCM or SPCM. See 18 U.S.C. § 922(g)(9). **Note:** Persons convicted of felony crimes of domestic violence at a GCM or SPCM are covered under 18 U.S.C. § 922(g)(1).

29.30.7.1. A “misdemeanor crime of domestic violence” for purposes of indexing under this section is defined as follows: an offense that— (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or

guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. Note: Exceptions to this definition can be located at 18 USC § 921(g)(33). See also 27 CFR 478.11.

29.30.7.2. SJAs should look at the underlying elements of each conviction to determine whether it triggers a prohibition under 18 U.S.C. § 922(g)(9). If a conviction is set aside, disapproved or overturned on appeal, the prohibition under this section is not triggered because the conviction no longer exists. The term “qualifying conviction” does not include summary courts-martial or the imposition of NJP under Article 15, UCMJ.

29.30.7.3. Government counsel and law enforcement must look at this prohibition on a case-by-case basis to ensure that the charged offense (e.g., violations of Articles 120, 120b, 128, 128b, 130, UCMJ, etc.) meets the statutory criteria for a “misdemeanor crime of domestic violence.” See 10 U.S.C. § 1562; DoDI 6400.07.

29.30.8. Persons accused of any offense punishable by imprisonment for a term exceeding one year, which has been referred to a general court-martial. 18 U.S.C. § 922(n).

29.30.9. Persons who are aliens admitted under a nonimmigrant visa or who are unlawfully in the United States. 18 U.S.C. § 922(g)(5).

29.30.10. Persons subject to a protective order issued by a court, provided the criteria in 18 U.S.C. § 922(g)(8) are met. This prohibition is triggered only by a court order issued by a judge. A military protective order does not trigger this prohibition; but does trigger indexing under [Section 29B](#).

**29.31. Notification to the Accused of Firearms Prohibition.** When a service member becomes ineligible to possess, purchase, or receive a firearm under 18 U.S.C. § 922, the DAF provides notification to that service member of the prohibition. See AFMAN 71-102, Chapter 4.

29.31.1. **Form of Notice.** A service member is notified of the applicability of 18 U.S.C. § 922 via AF Form 177.

29.31.2. **SJA Responsibility to Notify.** In all cases investigated by DAF involving an offense which implicates a firearms prohibition, the SJA must be aware of the nature of the prohibition and the entity responsible for making the notification. See AFMAN 71-102, Table 4.1 and Chapter 4, generally. However, in the following cases, the SJA is responsible for ensuring the notification to the accused is made:

29.31.2.1. Conviction at a GCM of any offense punishable by imprisonment for a term exceeding one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.2. Conviction at a GCM, SPCM, or SCM for use or possession of a controlled substance. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.3. Completion of NJP for any person found guilty of wrongful use or possession of a controlled substance. In such cases, the AF Form 177 should be provided to the accused for signature on or before completion of the supervisory SJA legal review.

29.31.2.4. After the accused is adjudicated as not guilty by reason of insanity or not competent to stand trial. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork.

29.31.2.5. Conviction resulting in a sentence including a dishonorable discharge. In such cases, the AF Form 177 may be provided to the accused for completion as part of the post-trial paperwork. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.6. Conviction at a GCM or SPCM for a crime of domestic violence, when the maximum punishment which may be adjudged for the offense in that forum is one year or less. **Note:** If this is a dual basis notification, the paperwork need only be served once, though both applicable prohibitions should be noted on the AF Form 177.

29.31.2.7. Referral of charges to a GCM where any offense carries a possible sentence to confinement in excess of one year. In such cases, the AF Form 177 may be provided to the accused for completion as part of the referral paperwork.

29.31.3. Practitioners are encouraged to deconflict with the local investigating DAF law enforcement agency in cases where law enforcement is also responsible for ensuring notification (i.e., where multiple prohibitions attached and law enforcement may be providing notification of any prohibition).

29.31.4. In cases where the investigating law enforcement agency is a non-DAF agency, these requirements may not apply. Contact DAF-CJIC for further guidance. See AFMAN 71-102.

29.31.5. Any notification made to the accused may be made through the accused's counsel.

29.31.6. If the accused declines to sign, this should be annotated on the form.

29.31.7. After completion of the form, the SJA must provide a copy of the completed AF Form 177 to DAF-CJIC within 24 hours of completion via email: [daf.cjic@us.af.mil](mailto:daf.cjic@us.af.mil). The SJA will also provide a digital copy to the member's commander and investigating DAF law enforcement. The legal office will forward the original and signed AF Form 177 via mail to DAF-CJIC, where it will be maintained as part of the official record. See AFMAN 71-102, Chapter 4.

**29.32. STR and EoJ.** In cases where specifications allege offenses which trigger a prohibition under 18 U.S.C. § 922 and the accused is found guilty of one or more such offenses, the appropriate box must be completed on the first indorsements to the STR and EoJ by the SJA. **Note:** If the accused is convicted of a crime of domestic violence as defined in paragraph [29.30.7.1](#) and [18 U.S.C. § 922](#), both the "Firearms Prohibition" and "Domestic Violence Conviction" blocks should be marked "yes."

**29.33. Final Disposition Requirement.** As the findings of a case may change after close of a court-martial, final disposition of court-martial charges must be forwarded to the local OSI detachment, Security Forces, and DAF-CJIC to ensure reporting pursuant to 18 U.S.C. §§ 921-922 is appropriately handled. Because the EoJ may differ from the adjudged findings and sentence, both the STR and EoJ, with accompanying first indorsements, must be distributed to the local

responsible DAF investigative agency and DAF-CJIC within five duty days of completion of the EoJ. Templates for the STR, EoJ, and first indorsement are located on the VMJD. The SJA must ensure disposition data requested by the local OSI detachment and Security Forces unit is provided to ensure timely and accurate inclusion of final disposition data. See [Section 29E](#) for further distribution guidance.

**29.34. SJA Coordination with Commanders.** The SJA or designee must inform commanders of the impact of the conviction on the accused's ability to handle firearms or ammunition as part of their official duties; brief commanders on retrieving all Government-issued firearms and ammunition and suspending the member's authority to possess Government-issued firearms and ammunition in the event a member is convicted of an offense of misdemeanor domestic violence (violations of the Lautenberg Amendment); and brief commanders on their limitations and abilities to advise members of their commands to lawfully dispose of their privately owned firearms and ammunition.

### *Section 29E—Distribution of Court-Martial Data for Indexing Purposes*

**29.35. General Provision.** In order to ensure that indexing requirements pursuant to this chapter are met, SJAs must ensure the following documents are distributed to the applicable local DAF law enforcement agency and DAF-CJIC:

29.35.1. Charge sheets in cases referred to general courts-martial, where any charged offense has a possible sentence to confinement greater than one year;

29.35.2. STR, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.3. EoJ and first indorsement, regardless of verdict or sentence, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.4. In SCMs for drug use or possession that would trigger firearm prohibitions, the final completed DD Form 2329 and first indorsement;

29.35.5. Certification of Final Review in any case where any offense qualifies for any type of indexing discussed in this chapter;

29.35.6. Notification of outcome of any cases as to qualifying offenses litigated at or disposed of via magistrate court;

29.35.7. Order pursuant to Article 73, UCMJ, for a new trial, where any charged offense qualifies for any type of indexing discussed in this chapter;

29.35.8. Order for a rehearing on the findings or sentence of a case, pursuant to Article 63, UCMJ and

29.35.9. Other final disposition documentation in cases not referred to trial where the offense investigated is a qualifying offense under [Sections 29B-D](#) of this chapter (e.g., decision not to refer certain sexual assault offenses to trial in accordance with [paragraph 10.2](#); NJP records in accordance with DAFI 51-202; notification of administrative discharge where the basis is a qualifying offense; approval of a request for resignation or retirement in lieu of trial by court-martial, administrative paperwork for drug use or possession).