

2 May 2025

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

UNITED STATES,)	UNITED STATES' ANSWER TO
<i>Appellee,</i>)	TO SUPPLEMENT TO PETITION
)	FOR GRANT OF REVIEW
v.)	
)	USCA Dkt. No. 25-0119/AF
Senior Airman (E-4))	
CAMERON N. HOGANS, USAF,)	Crim. App. No. 22091
<i>Appellant.</i>)	

**TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:**

ISSUES PRESENTED

I.¹

**WHETHER THE MILITARY JUDGE ABUSED HIS
DISCRETION WHEN HE DENIED A DEFENSE
MOTION TO EXCLUDE A VIDEO THAT THE
GOVERNMENT HAD IN ITS POSSESSION FOR
OVER A YEAR FOR A RELATED CASE BUT
WHICH IT HAD FAILED TO DISCLOSE UNTIL
THE NIGHT BEFORE TRIAL.**

II.

**WHETHER THE MILITARY JUDGE ABUSED HIS
DISCRETION AND ABANDONED HIS
NEUTRALITY IN SUA SPONTE MOVING FOR A**

¹ The United States challenges this petition on jurisdictional grounds. The United States otherwise enters its general opposition to the other issues raised. The United States relies on its brief filed with the Air Force Court of Criminal Appeals (AFCCA) on 28 May 2024, unless requested to do otherwise by this Court.

**FINDING OF NOT GUILTY AND THEN
ALLOWING THE GOVERNMENT TO REOPEN
ITS CASE TO ESTABLISH THE MISSING
ELEMENT THAT HE IDENTIFIED.**

STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (AFCCA) found that it had statutory authority to review this case under Article 66(b)(1)(A), UCMJ (2022). Because AFCCA reviewed the case, this Court has jurisdiction to review AFCCA's decision under Article 67(a)(3), UCMJ; 10 U.S.C. § 867(a)(3) (2020).

STATEMENT OF CASE

The United States generally agrees with Appellant's statement of the case. Appellant received Article 65(d), 10 U.S.C. § 865(d) (2018) review on 14 November 2022. (ROT, Vol. 1.) Thus, his court-martial was final under Article 57(c)(1), UCMJ, 10 U.S.C. § 857(c)(1) (2018) before the change to Article 66 in the National Defense Authorization Act for Fiscal Year 2023 (FY 23 NDAA) that would purportedly give the Air Force Court jurisdiction over his court-martial. *See* Pub. L. No. 117-263, § 544(b)(1)(A), 136 Stat. 2395, 2582 (23 Dec. 2022).

ARGUMENT

AFCCA LACKED JURISDICTION. THIS COURT SHOULD GRANT REVIEW AND VACATE AFCCA'S DECISION.

Standard of Review

This Court reviews questions related to jurisdiction *de novo*. See United States v. Brubaker-Escobar, 81 M.J. 471, 474 (C.A.A.F. 2021).

Law

This case raises the same jurisdictional issues as in United States v. Folts, Dkt. No. 25-0043/AF. Appellant's case was already final under Article 57(c)(1) when Congress expanded the Article 66, UCMJ, 10 U.S.C. §866, right to direct appellate review by a Court of Criminal Appeals in the FY 23 NDAA. For the same reasons as argued by the government in United States v. Folts, AFCCA did not have jurisdiction to reopen direct appellate review of Appellant's statutorily final court-martial conviction.

The presumption against retroactively holds that if a statutory amendment would attach "new legal consequences to events completed before its enactment" the amendment does not apply retroactively absent "clear congressional intent." Landgraf v. USI Film Prods., 511 U.S. 244, 270-80 (1994). Here, AFCCA's application of the FY 23 NDAA Article 66 amendments to Appellant attached new legal consequences (the reopening of direct appellate review) to a court-martial

that was already statutorily final. And AFCCA reopened direct appellate review without identifying any *clear* congressional intent to do so. This was error.

Without clear congressional intent, the presumption against retroactivity applies, and the Article 66 amendments do not apply to Appellant's case.

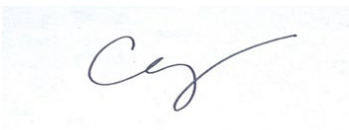
The fact that Appellant still could have applied for Article 69, UCMJ, 10 U.S.C. §869 review as of 23 December 2022 does not affect the finality of his conviction. "Finality of a legal judgment is determined by statute," Plaut v. Spendthrift Farm, 514 U.S. 21, 227 (1995), and, here, the statute (Article 57) does nothing to tie finality to Article 69 review. And Article 69 review "is not part of appellate review within the meaning of Article 76 or R.C.M. 1209." R.C.M. 1201(h)(4)(B) Discussion (2019 ed.). *See also* 53 Am Jur 2d Military and Civil Defense § 30.8 ("The procedure by which a case may be considered by the Judge Advocate General [under Article 69] is not part of the appellate review considered final within the meaning of Article 76 of the Uniform Code of Military Justice."); Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, 24 January 2024, para. 24.18 ("For cases that do not require corrective action, [special courts-martial] and [general courts-martial] reviewed under Article 65, UCMJ, are final under Article 76, UCMJ, upon completion of the judge advocate's review."); DAFI 51-201, 14 April 2022, para. 24.17 (same).

The text of Article 76, UCMJ, 10 U.S.C. §876 (2018) supports this. The article states “[t]he appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter . . .are final and conclusive.” Per Article 57(c), Article 69 review is not part of “appellate review.” And Article 69 review is not a review “required by this chapter.” The language of Article 69 is discretionary, and the Judge Advocate General is not *required* to review a case under that article. As a result, Appellant’s case was final after Article 65(d) review.

In sum, there is no basis for this Court to conclude that AFCCA had jurisdiction over Appellant’s case.

CONCLUSION

The United States respectfully requests that this Court grant review and vacate the decision of the Court of Criminal Appeals.



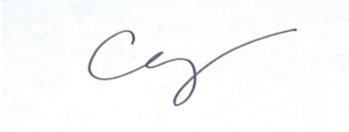
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 2 May 2025.



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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

This brief complies with the type-volume limitation of Rule 24(c) because this brief contains 806 words. This brief complies with the typeface and type style requirements of Rule 37.

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A handwritten signature in black ink, reading 'Mary Ellen Payne', on a white background.

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