IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,	)	**REPLY TO THE ANSWER**
Appellee,	)	**TO THE SUPPLEMENT**
	)	**TO THE PETITION FOR**
	)	**GRANT OF REVIEW**
v.	)	
	)	
	)	Crim. App. Dkt. No. 40481
KRIS A. HOLLENBACK,	)	
Major (O-4),	)	USCA Dkt. No. 24-0235/AF
United States Air Force,	)	
Appellant.	)	October 22, 2024

Appellant, Major (Maj) Kris A. Hollenback, pursuant to Rule 21(c)(2) of this Court's Rules of Practice and Procedure, files this reply to the United States' Answer to Supplement to Petition for Grant of Review (Ans.). Maj Hollenback maintains the arguments in the Supplement to the Petition for Grant of Review, filed on September 25, 2024 (Supp.), and in reply to the Answer submits additional arguments for the first and second issues presented.

In the Supplement, Maj Hollenback focused on how the Air Force Court of Criminal Appeals (AFCCA) had jurisdiction to review and act upon the erroneous firearm bar contained in the Staff Judge Advocate's (SJA's) indorsement to the entry of judgment[1] (EOJ) by virtue of the unique way the Air Force conducts post-trial

[1] As in the Supplement, the initialism "EOJ" will refer to the document in the record of trial, while the term "entry of judgment" refers to the legal judgment under Article 60c, Uniform Code of Military Justice (UCMJ).

processing. While in its Answer the Government offers an alternative argument, it fails to provide a reason why this Court should deny review. Indeed, more questions than answers about this Court's and the AFCCA's jurisdiction are raised by the Government's response, underscoring that this Court should grant review to resolve these issues.

While the Government responds only to the first issue presented—whether the AFCCA had jurisdiction—the factual predicate of the Government's rejoinder implicates *this Court's* jurisdiction, the second issue presented. *See* Ans. at 8 (arguing "the § 922 annotation was entered into the record before the judgment and then again simultaneously with the judgment"). The Government's argument that AFCCA lacked jurisdiction based on these two factual premises, *id*., demonstrates that this Court has jurisdiction for two reasons.

First, the Government recognizes that a "§ 922 annotation [is] entered into the record before the judgment." This annotation is part of the entry of judgment made by the military judge, and therefore is reviewable by this Court. Article 67(c)(1)(B), UCMJ. This is because the statement of trial results (STR) containing this annotation is incorporated as part of the entry of judgment, making it a "judgment . . . by a military judge, as affirmed or set aside as incorrect in law of by the Court of Criminal Appeals." Article 67(c)(1)(B), UCMJ; *see* Article 60c, UCMJ (requiring the STR as part of the entry of judgment); Rule for Courts-Martial (R.C.M.) 1111(b)(4)

(requiring the STR as part of the entry of judgment); Department of the Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 20.40.1 (Apr. 8, 2022) ("Minimum Contents. . . . the STR must be included as an attachment.");[2] EOJ (Mar. 28, 2023) (listing the three-page STR as the first attachment, the third page being the SJA's indorsement).

This aligns with this Court's reasoning in *United States v. Williams*, No. 24-0015, __ M.J. __, 2024 CAAF LEXIS 501, at *10 (C.A.A.F. Sept. 5, 2024). This Court held it had jurisdiction to vacate the Army Court of Criminal Appeals' ultra vires act of using its power under Article 66, UCMJ, to modify a STR the military judge changed during entry of judgment pursuant to Article 67(c)(1)(B), UCMJ. Article 67(c)(1)(B), UCMJ, provides this Court with authority to act with respect to "a decision, judgment, or order by a military judge, as affirmed or set aside as incorrect in law by the [service court of criminal appeals]." *Williams*, 2024 CAAF LEXIS 501, at *10. Here, this same logic allows this Court to act on the STR adopted by the military judge during entry of judgment, which was affirmed by the AFCCA through review of the EOJ. *United States v. Hollenback*, No. ACM 40481, slip op. at 2 (A.F. Ct. Crim. App. Aug. 2, 2024) ("The findings and sentence *as entered* are correct in law . . . .") (emphasis added).[3] Standing alone, Article 67(c)(1)(A), UCMJ,

[2] This section of the AFI was provided in the Supplement as Appendix B.
[3] The slip opinion was provided in the Supplement as Appendix A.

does not grant authority to modify the STR. But the addition of Article 67(c)(1)(B), UCMJ, grants broader authority to act with regard to a military judge's "decision, judgment, or order." The plain language of the statute dictates this Court can act on the indorsement in the STR adopted by the military judge during entry of judgment.

While the question presented and the specified issue in *Johnson* focuses on the indorsement to the *EOJ*, the ability for this Court to review the *STR* indorsement becomes important in the face of the Government's assertion that review of the EOJ indorsement would be a "pyrrhic victory." Ans. at 12. Aside from review of the EOJ indorsement *not* being a pyrrhic victory—because it is distinct from the STR indorsement and represents the final disposition of the court-martial, R.C.M. 1111(a)(2), and thus the operative notification to law enforcement—this Court can also correct any erroneous and unconstitutional firearm provision on the STR indorsement. This is because this Court has jurisdiction to review a judgement by a military judge. Based on the Government's own representations, review by this Court is possible because of the way the Air Force does its post-trial processing.

Second, the Government's assertion that "[t]he § 922 annotation was entered . . . simultaneously with the judgment" is a legal and practical impossibility. Either the Government is admitting it does not follow its own laws and regulations,[4] which

[4] Although, the Government has taken to not following its own regulations when it comes to firearm bans. *See, e.g.*, Supplement to the Petition for Grant of Review, *United States v. Dominguez-Garcia*, USCA Dkt. No. 24-0183 (June 14, 2024), *rev.*

state that the indorsement comes *after* the entry of judgment is entered, AFI 51-201, at ¶ 20.41, or it is conceding that the indorsement is part of the entry of judgment the military judge signs.

For the former, there is no evidence the Government did not send the EOJ to the military judge first, who then signed it and sent it back to the SJA for the indorsement to be appended after entry of judgment. AFI 51-201, at ¶ 20.41. In this situation, mandated by AFI, the AFCCA has jurisdiction under Article 66(d)(2), UCMJ, because the error on the indorsement occurs after the entry of judgment. Supp. at 7-9.

For the latter, if the "annotation is entered simultaneously with the judgment," then the annotation is part of the judgment, signed and entered by the military judge, especially considering it is the third page of the judgment itself. This is like saying the indorsement is an "attachment" to the EOJ. Ans. at 12. To be clear, the indorsement is not an attachment to the EOJ like the STR is. Entry of Judgment (Mar. 28, 2023). It is not listed as an attachment. *Id*. at 2. It is on its own consecutively numbered page of the EOJ. *Id*. at 3. But if the Government wants to call it an "attachment," then much like the STR and its indorsement, the EOJ indorsement is adopted by the military judge upon entering judgment. Therefore,

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granted USCA Dkt. No. 24-0183 (Oct. 3, 2024) (highlighting that at a special court-martial the Government barred this appellant from owning or possessing firearms contrary to its own regulation, AFI 51-201, at ¶ 29.30.1.1).

even if the Government's characterization of the record is accurate such that the indorsement is not *after* the entry of judgment under Article 66(d)(2), UCMJ, but rather "simultaneous with" or an "attachment" to the entry of judgment, this is a concession that *this* Court has jurisdiction to review the indorsement to the EOJ under Article 67(c)(1)(B), UCMJ.

This Court should grant Maj Hollenback's case for resolution of all three issues presented. That the Government makes only a merits argument on the AFCCA's jurisdiction, while simultaneously conceding through factual assertions that this Court has jurisdiction, accentuates that these are still open issues needing resolution. *See* Order Granting Review, *United States v. Johnson*, No. 24-0004/SF (C.A.A.F. Sept. 24, 2024) (specifying briefing on whether this Court has jurisdiction to review and act upon the indorsement to the EOJ after *Williams*).

WHEREFORE, Maj Hollenback respectfully requests this Court grant review.

Respectfully Submitted,

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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 October 22, 2024, and that a copy was also electronically served on the Air Force Government Trial and Appellate Operations Division on the same date.

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CERTIFICATE OF COMPLIANCE
WITH RULES 21(b), 24(b) & 37

This filing complies with the type-volume limitation of Rules 21(b) and 24(b) because it contains 1,433 words.

This filing 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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