

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. 25-0148/AF
Airman First Class (E-3)	)	
JOHN P. MATTI, USAF,	)	Crim. App. No. 22072
<i>Appellant.</i>	)	

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

**ISSUES PRESENTED**

**I.<sup>1</sup>**

**WHETHER TRIAL COUNSEL COMMITTED  
PROSECUTORIAL MISCONDUCT THROUGH  
IMPROPER BOLSTERING, IMPROPER  
VOUCHING, IMPROPER USE OF FACTS NOT IN  
EVIDENCE, AND SHIFTING THE BURDEN TO  
DEFENSE IN FINDINGS ARGUMENT.**

**II.**

**WHETHER APPELLANT'S CONSTITUTIONAL  
RIGHTS WERE VIOLATED WHEN HE WAS  
CONVICTED OF AN OFFENSE WITH NO  
REQUIREMENT THE COURT-MARTIAL PANEL**

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<sup>1</sup> 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 22 August 2024, unless requested to do otherwise by this Court.

**(THE FUNCTIONAL EQUIVALENT OF A JURY)  
VOTE UNANIMOUSLY FOR GUILT).**

**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 9 September 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).

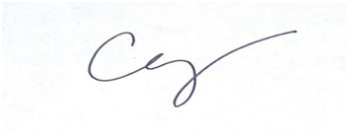
The text of Article 76, UCMJ, 10 U.S.C. §876 (2018) supports this. The article states “[t]he appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter . . . are final and conclusive.” 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.

A handwritten signature in black ink, appearing to read 'Coy', on a light blue background.

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

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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.



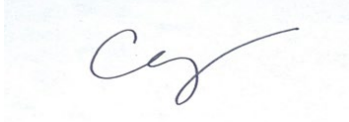
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## **CERTIFICATE OF COMPLIANCE WITH RULE 24(d)**

This brief complies with the type-volume limitation of Rule 24(c) because this brief contains 780 words. This brief complies with the typeface and type style requirements of Rule 37.



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