IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee v. Alvin VALENCIA Lance Corporal (E-3) United States Marine Corps, Appellant	BRIEF ON BEHALF OF APPELLANT Crim.App. Dkt. No. 202300240 USCA Dkt. No. 25-0089/MC

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

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Issue Presented

Whether the lower court erred when it concluded Appellant's claim of factual insufficiency did not trigger a factual sufficiency review under Article 66, UCMJ.

Statement of Statutory Jurisdiction

The Navy-Marine Corps Court of Criminal Appeals reviewed this case under Article 66(b)(1), Uniform Code of Military Justice (UCMJ).[1] Appellant invokes this Court's jurisdiction under Article 67(a)(3), UCMJ.

Relevant Authorities

Article 66(d)(1)(B). Courts of Criminal Appeals (effective Jan 1, 2021).

. . .

(d) DUTIES

(1) Cases Appealed by the Accused-

. . .

(B) Factual Sufficiency Review

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

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[1] 10 U.S.C. § 866(b)(1) (2024).

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 17 (2019)

Article 91—Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

(a) *Text of statute.*

. . .

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in execution of his office

(b) elements

. . .

(3) *Treating with contempt or being disrespectful in language or deportment toward a warrant, noncommissioned, or petty officer.*

(a) that the accused was a warrant officer or enlisted member;

(b) that the accused did or omitted certain acts, or used certain language;

(c) that such behavior or language was used toward and within sight or hearing of a certain warrant, noncommissioned, or petty officer;

(d) that the accused then know that person toward whom the behavior or language was directed was a warrant, noncommissioned, or petty officer;

(e) that the victim was then in the execution of officer; and

(f) that under the circumstances the accused, by such behavior or language, treated with contempt or was disrespectful to said warrant, noncommissioned of petty officer.

Statement of the Case

A special court-martial consisting of a military judge alone convicted Appellant, contrary to his pleas, of violating Article 91, UCMJ (disrespect in deportment toward a noncommissioned officer).[2] The military judge sentenced Appellant to no punishment.[3] The military judge entered the findings and sentence into judgment.[4] On direct appeal, the lower court found no prejudicial error and affirmed the findings.[5]

Statement of Facts

Concerned that Appellant went off base for chow without authorization and unsatisfied with his response about his whereabouts, Corporal (Cpl) Vinson ordered Appellant to report to her office for counseling.[6] He reported as ordered, sat in a chair opposite Cpl Vinson's desk, and she began to counsel him.[7] Cpl Vinson informed Appellant that since he had gone to lunch off base without permission, Cpl

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[2] J.A. at 203.
[3] J.A. at 204.
[4] Entry of Judgment (J.A. at 073-075)
[5] *United States v. Valencia*, No. 202300240, slip. op., 85 M.J. 529 (N-M. Ct. Crim. App. 2024) (J.A. at 001-011).
[6] J.A. at 122. At the time of her testimony, Cpl Vinson was a Sergeant. However, she was a Corporal at the time of the alleged offense. Charge Sheet (J.A. at 077-8).
[7] J.A. at 122-23.

Antonio would escort him if he had to go anywhere during working hours.[8] Appellant agreed to an escort, but objected to Cpl Antonio filling this role.[9] Upon hearing this, Cpl Antonio, who was also present, launched into a diatribe.[10] While Appellant remained seated, Cpl Antonio got into his face and yelled at him with spit flying onto Appellant.[11] When Cpl Antonio finished berating Appellant and left the office, Cpl Vinson completed the counseling.[12]

The Government subsequently charged Appellant with disrespect in deportment toward Cpl Vinson under Article 91, UCMJ. In framing the charged specification, however, the Government only alleged that Appellant said certain words to her.

At trial, the Government first called Cpl Antonio. Cpl Antonio testified that he observed Cpl Vinson counsel Appellant and tell him it was unacceptable for him to ignore an NCO who was put in charge of him.[13] Cpl Antonio testified that, in response to Cpl Vinson's counseling, Appellant "told her, with me standing right there, that Antonio will not be the one supervising me."[14]

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[8] J.A. at 129.
[9] J.A. at 129-30.
[10] J.A. at 131, 177.
[11] J.A. at 099, 133, 178.
[12] J.A. at 146.
[13] J.A. at 096.
[14] J.A. at 096.

Cpl Vinson testified next. She testified that although Appellant accepted the fact that he would have an escort, he interrupted her to express his objection to assigning Cpl Antonio to that role, which she found disrespectful. She testified:

> So for junior Marines, unless you're being anything, like, immoral like that, the basic military respect is to call somebody by their rank. If you're standing up, you're at parade rest. Or if you're speaking to somebody, you wait until they finish what they're saying. And if you have a rebuttal for it, you say it tactfully. And [Appellant] did none of those.[15]

Cpl Vinson also testified that she believed Appellant was telling her, rather than asking her, that he would have a different escort.[16]

In its case, the Defense called Sergeant (Sgt) Wilson, who was also present for the counseling. He testified that Appellant was seated for the counseling.[17] He remembered, "[Appellant] said something to the effect of he did not want Cpl Antonio to be the one who was going to be supervising him, so he said he would have anyone else, but not Cpl Antonio."[18]

The Defense then called LCpl Davies, the only witness not an NCO in Appellant's command.[19] He testified that during the counseling he was in the across the hall and could hear and see everything.[20] He saw Appellant remain seated while

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[15] J.A. at 130.
[16] J.A. at 130.
[17] J.A. at 142.
[18] J.A. at 164.
[19] J.A. at 176.
[20] J.A. at 177.

Cpl Antonio was screaming at him, and heard Appellant calmly ask Cpl Antonio multiple times to stop spitting on him.[21]

The Military Judge found Appellant guilty of disrespect towards an NCO,[22] but sentenced him to no punishment.[23] He then recommended that the findings and sentence be set aside and that non-judicial punishment be imposed instead.[24]

Appellant raised three assignments of error regarding Specification 1 of the Charge to the lower court, including (1) failure to state an offense, (2) legal insufficiency, and (3) factual insufficiency. The lower court found no prejudicial error on the first two and declined to conduct a factual sufficiency review based on its conclusion that Appellant's claim had not triggered that review.[25]

Summary of Argument

The lower court inflated the triggering mechanism required for an appellant to receive a factual sufficiency review under Article 66(d)(1)(B), UCMJ. The statute is unambiguous and its plain meaning should be given effect. The statute is straight forward and requires appellants to "request" factual sufficiency review and "make[] a specific showing of a deficiency of proof" in the Government's case. In practice, this means appellants must raise a factual sufficiency assignment of error, state

[21] J.A. at 177-78.
[22] J.A. at 203.
[23] J.A. at 204.
[24] J.A. at 074 (Entry of Judgment).
[25] *Valencia*, slip. op. at 2 (J.A. at 2).

which element or elements the Government failed to prove beyond a reasonable doubt, and explain why or how it failed to prove the element(s) beyond a reasonable doubt even if that argument ultimately fails on its merits. Appellant met those requirements, but the lower court declined to conduct factual sufficiency review on the basis that Appellant did not "make a specific showing of a deficiency in proof."

In so holding, the lower court departed from the plain meaning of the statute to conclude that to show a deficiency in proof Appellant needed to show there was a "substantive[] conflict" among the "testimony . . . in major respects," "there was a credibility dispute as to what was said" that the court needed to resolve, or that there was "materially inconsistent evidence or conflicting testimony" for the court to resolve. In doing so, the lower court eroded an important congressionally afforded safeguard that ensures reliable convictions. This Court should reverse.

Argument

The triggering mechanism for factual sufficiency review in Article 66(d)(1)(D) is satisfied by identifying how the Government failed to prove an element beyond a reasonable doubt, then arguing how the Government failed to do so even if that argument ultimately fails on its merits.

Standard of Review

This Court reviews questions of statutory construction *de novo*.[26]

Discussion

For cases where all charged offenses are alleged to have occurred on or after January 1, 2021, as is the case here, to obtain factual sufficiency review, the accused must request it and make a showing to trigger that analysis:

> (i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact *upon request of the accused* if the accused makes a *specific showing of a deficiency in proof*.
>
> (ii) *After* an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact . . . .[27]

[26] *United States v. Kohlebek*, 78 M.J. 326, 330-31 (C.A.A.F. 2019) (citing *United States v. Atchak*, 75 M.J. 193, 195 (C.A.A.F. 2016)).

[27] Art. 66(d)(1)(B), UCMJ (effective Jan 1, 2021) (emphasis added).

A. The triggering mechanism in the statute is unambiguous and its plain language should be given effect.

"In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself."[28] When "a statute is unambiguous, the plain meaning of the words will control, so long as that meaning does not lead to an absurd result."[29] Indeed, "[w]here the language of the statute is clear and 'Congress has directly spoken to the precise question at issue,' a court must 'give effect to the unambiguously expressed intent of Congress.'"[30] The "sole function of the courts" is to enforce a statute according to its terms and where "that examination yields a clear answer, judges must stop."[31]

1. A word-by-word and clause-by-clause analysis shows the meaning is plain.

The operative language setting forth the triggering requirement is that factual sufficiency review shall occur "upon request of the accused if the accused makes a specific showing of a deficiency in proof."[32] This statutory language is

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[28] *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (citing *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 407 (2011)).
[29] *United States v. Ortiz*, 76 M.J. 189, 191-92 (C.A.A.F. 2017) (citing *United States v. Kearns*, 73 M.J. 177, 181 (C.A.A.F. 2014); *United States v. King*, 71 M.J. 50, 52 (C.A.A.F. 2012); *United States v. Graham*, 16 M.J. 460, 42-66 (C.M.A. 1983); *United States v. Dickenson*, 6 C.M.A. 438, 449-50 (1955)).
[30] *Kearns*, 73 M.J. at 181 (quoting *Chevron U.S.A., Inc. v. Natural res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984)).
[31] *Id*. (citing *Lamie v. United States Tc.*, 540 U.S. 526, 534 (2004)); *see also Food Mktg. Inst.* 139 S. Ct. at 236.
[32] Art. 66(d)(1)(B), UCMJ (effective Jan 1, 2021).

clear and unambiguous. First, the clause "upon request of the accused" is axiomatic. This clause is satisfied simply by an appellant asking for a factual sufficiency review.

Next, the meaning of a "specific showing of a deficiency of proof" is similarly clear and unambiguous. Black's Law Dictionary is the "preeminent source for definitions of legal terms and phrases."[33] While it does not define the phrase "specific showing of a deficiency of proof," it does define the individual terms. It defines "specific" as "[o]f, relating to, or designating a particular and defined thing."[34] "Showing" is defined as "[t]he act or an instance of establishing through evidence and argument; proof."[35] And its defines "deficiency" as "a lack, shortage, or insufficiency of something that is necessary."[36] In 1970, the Army Court of Military Review explained that a "deficiency of proof, specifically, is the failure of the Government, either directly or circumstantially, to establish that [an element of the offense was met]."[37]

Taken together, in the context of the statute, "a specific showing of a deficiency in proof" refers to an appellant pointing to an element of a charged

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[33] *Schmidt*, 82 M.J. at 75-76.
[34] *Specific*, BLACK'S LAW DICTIONARY (11th ed. 2019) (J.A. at 209).
[35] *Showing*, BLACK'S LAW DICTIONARY (11th ed. 2019) (J.A. at 208).
[36] *Deficiency*, BLACK'S LAW DICTIONARY (11th ed. 2019) (J.A. at 207).
[37] *United States v. Dolan*, 42 C.M.R. 893, 894 (A.C.M.R. 1970); *see also United States v. Anderson*, 37 M.J. 953, 958 (A.C.M.R. 1993) (finding that presentation of only circumstantial evidence can create a deficiency of proof).

offense and explaining how the Government failed to prove it. Importantly, there is no modifier on "showing" other than the requirement that the "showing" is "specific." So blanket requests for factual sufficiency review would not satisfy the triggering requirement. An appellant must explain why the Government's proof does not meet the required beyond-a-reasonable doubt standard for at least one element, "through evidence and argument."—nothing more.[38]

2. Context within the statute supports Appellant's assertion that part (i) is a straightforward triggering mechanism.

This understanding is supported by the context of the remaining statute. Clause (ii) explains that only "*[a]fter* an accused has made such a showing" will a service court "weigh the evidence and determine controverted questions of fact."[39] This deliberate step in the analysis indicates that a service court will not engage in evaluating any evidence, including weighing the merits of an appellant's "specific showing of a deficiency in proof," until it moves into clause (ii) and later clause (iii). No analysis is made of a "specific showing" beyond whether it has identified an alleged deficiency in the Government's case.

[38] *See Showing*, BLACK'S LAW DICTIONARY (11th ed. 2019) (J.A. at 208).
[39] Art. 66(d)(1)(B)(ii), UCMJ (effective Jan. 1, 2021) (emphasis added).

B. Legislative history supports Appellant's position that part (i) is a straightforward triggering mechanism rather than a heightened barrier for review.

While Appellant does not believe there is any ambiguity in the statute's language, should the Court look to legislative history, the Report of the Military Justice Review Group (MJRG) supports this interpretation.[40] The MJRG explained the proposed language was designed to "require the accused to raise any factual sufficiency issues regarding the findings" by making "a specific showing of deficiencies in proof."[41] The MJRG's proposal was generally adopted, indicating Congressional agreement with this intent.[42]

Moreover, the MJRG proposal drew on "New York state practice."[43] In doing so, it explicitly identified New York law as having a two-step process for factual sufficiency review where "upon request of the defendant . . . the court must [first] 'determine whether an acquittal would not have been unreasonable'" before proceeding to weigh the evidence for factual sufficiency.[44] That the MJRG

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[40] *See Food Mktg. Inst.*, 139 S. Ct. at 2364.
[41] Report of the Military Justice Review Group, Part I: UCMJ Recommendations (Dec. 22, 2015) [hereinafter MJRG] at 605-20 (J.A. at 212-25).
[42] The MJRG proposed "the Court of Criminal Appeals, upon request of the accused, may consider the weight of the evidence upon a specific showing of deficiencies in proof by the accused." MJRG at 615 (J.A. at 222).
[43] MJRG at 610 (J.A. at 217).
[44] *Id.* at 610 n.25 (citing N.Y. Crim. Proc. Law § 470.15) (J.A. at 217); *People v. Danielson*, 9 N.Y.3d 342, 348 (2007).

acknowledged this requirement in New York state law but did not include the same test in its proposed language is noteworthy.

Thus, the triggering requirement is satisfied when an appellant merely requests review of a deficiency in the evidence supporting an element of an offense. This is a "specific showing of a deficiency in proof" and triggers factual sufficiency review, permitting a CCA to *then* "consider whether the finding is correct in fact" as controlled by clauses (ii) and (iii).

C. Appellant satisfied Article 66's triggering requirement.

The NMCCA held Appellant did not trigger a factual sufficiency review because "[t]he testimony did not substantially conflict in major respects" and did not "require the court to resolve a credibility dispute as to what was said, or to otherwise resolve materially inconsistent evidence or conflicting testimony."[45] Neither of these perceived requirements is in part (i). Appellant needs to do two things as discussed above: (1) make a request for a factual sufficiency review; and (2) make a specific showing of a deficiency in proof. This means Appellant must raise a factual sufficiency assignment of error, state which element or elements the Government failed to prove beyond a reasonable doubt and explain why or how they failed to prove the element(s) beyond a reasonable doubt.

[45] *Valencia*, slip. op. at 10 (J.A. at 10).

1. Appellant requested a factual sufficiency review by raising factual sufficiency as an assignment of error.

Here, Appellant raised an Assignment of Error asserting "the evidence is not factually sufficient to support appellant's conviction of disrespect towards a noncommissioned officer by deportment."[46] By raising a factual sufficiency error and citing to Article 66(d)(1)(B), UCMJ, Appellant satisfied the "request of the accused" requirement.[47]

2. Appellant specifically identified the element the Government did not prove.

In Appellant's brief and assignments of error regarding factual sufficiency, Appellant specifically identified the element he believed the Government did not prove: "that under the circumstances the accused, by such behavior or language, treated with contempt or was disrespectful to a noncommissioned officer."[48]

3. Appellant made a specific showing of a deficiency of proof by arguing how Appellant's objection to Cpl Antonio as his escort did not rise to the level of disrespect required for a conviction.

After identifying the element that Appellant contends the Government did not prove, Appellant then argued how Appellant's actions were not disrespectful. Specifically, Appellant relied on *United States v. Felton*—a case in which the Army

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[46] Appellant's Brief and Assignment of Error at 15 (J.A. at 027).
[47] *Id.* at 15-16 (J.A. at 027-28); Art. 66(d)(1)(B), UCMJ (effective Jan. 1, 2021).
[48] 10 U.S.C. 891(b)(3)(f) (2018); Appellant's Brief and Assignment of Error at 16 (J.A. at 028).

Court of Criminal Appeals reversed on factual insufficiency grounds—to show how the Government's evidence failed to prove the offense.[49] Appellant argued that his actions were more constrained than those in *Felton* and therefore did not rise to the level of disrespect required for a conviction.[50] Additionally, Appellant argued how the testimony of the various witnesses failed to prove that Appellant's actions were disrespectful.[51] Accordingly, Appellant made a "specific showing of a deficiency of proof" by arguing that the Government failed to prove a specific element—element (f).[52]

The lower court improperly characterized Appellant's argument on the deficiencies in the Government's proof of the disrespect element as "nothing more than a disagreement with the factfinder's conclusion, not a claim in of deficiency in the evidence."[53] All claims of factual insufficiency involve a disagreement with the factfinder's conclusion. And in every case the reasons for the disagreement are the alleged deficiency in the evidence. The lower court improperly weighed the evidence at the triggering phase of the process (part (i)), rather than waiting to conduct this part of the analysis in part (ii) as the statute requires.

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[49] Appellant's Brief and Assignment of Error at 16-17 (J.A. at 028-29); *see United States v. Felton*, 2020 CCA LEXIS 482, at *1-2 (A. Ct. Crim. App. 2020).
[50] Appellant's Brief and Assignment of Error at 18 (J.A. at 030)
[51] *Id.*
[52] 10 U.S.C. § 891(b)(3)(f) (2018).
[53] *Valencia,* slip. op. at 10 (J.A. at 10).

4. Appellant is not required to show major conflicts in testimony, inconsistent testimony, or credibility flaws to raise factual sufficiency.

To trigger factual sufficiency review, an appellant must meet the conditions under part (i).[54] An appellant does not need to show that "[t]he testimony [] substantially conflict[ed] in major respects" or "require[s] the court to resolve a credibility dispute as to what was said, or to otherwise resolve materially inconsistent evidence or conflicting testimony" to obtain factual sufficiency review.[55] Otherwise, cases where the government presented testimony from a single incredible witness would be nearly impervious to factual sufficiency review because there may be no testimony that substantively conflicts in "major respects."[56] There need not be competing testimony for the Government to have failed to meet its evidentiary burden, which is proof beyond a reasonable doubt.

If an appellant makes a specific showing that the Government failed to prove an element, he has triggered factual sufficiency review. This can be done by weighing the evidence or controverted questions of fact or both.[57] Subpart (iii) specifically says "weight of the evidence" is alone the basis to overturn a conviction.[58]

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[54] Art. 66(d)(1)(B), UCMJ (effective Jan. 1, 2021).
[55] *Valencia*, slip. op. at 10 (J.A. at 10).
[56] *Id.*
[57] Art. 66(d)(1)(B), UCMJ (effective Jan. 1, 2021).
[58] *Id.* (emphasis added).

D. This Court should correct the lower court's erroneous interpretation of Article 66 because factual sufficiency review is an important and long-standing protection Congress implemented to ensure the integrity of the military justice system.

Factual sufficiency review is a unique authority granted to the CCAs to "provide a source of structural integrity to ensure the protection of service members' rights within a system of military discipline and justice where commanders themselves retain awesome and plenary responsibility."[59] This review has been deemed necessary in a process where (1) the military is an inherently coercive environment; (2) the person who selects the charges in many cases also selects the members and initially grants or denies the defense's requests for expert assistance and witnesses; and (3) unanimous verdicts are not required.[60] Factual sufficiency review is critical in ensuring the military justice system can operate within these limitations and produce convictions in which the public can have confidence.[61]

Indeed, this Court has pointed to factual sufficiency review as a safeguard in the military justice system. Specifically regarding unanimous verdicts, the Court pointed to factual sufficiency review as a means to address questions of

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[59] *United States v. Jenkins*, 60 M.J. 27, 29 (C.A.A.F. 2004).
[60] *United States v. Anderson*, 83 M.J. 291, 299 (C.A.A.F. 2023); *United States v. Finch*, 64 M.J. 118, 129 (C.A.A.F. 2006); *Jenkins*, 60 M.J. at 29.
[61] *See United States v. Uribe*, 80 M.J. 442, 449 (C.A.A.F. 2021) (citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 868 (1988)).

"impartiality and fairness of courts-martial without unanimous verdicts."[62] Additionally, this Court again referred to an accused's appellate rights under Article 66(b) (including factual sufficiency review) in concluding accused do not have the right to courts-martial by members.[63] Inhibiting factual sufficiency review by narrowly interpreting "specific deficiency of proof" would limit the important safeguard this Court has emphasized. A significant change in this authority would upset the "the tests and limitations [of due process]" that exist uniquely in military justice, which Congress has not done through Article 66(d)(1)(B)(i).[64]

Conclusion

The NMCCA improperly inflated the triggering requirements of Article 66(d)(1)(B)(i), UCMJ, for factual sufficiency review. In doing so, it created a fuzzy standard, making it difficult to determine which appellants will get factual sufficiency review and which ones won't. This Court should adhere to Congress' plain language and hold that to trigger factual sufficiency review an appellant must (1) raise an assignment of error alleging that one or more elements was not satisfied beyond a reasonable doubt and (2) argue why or how the element was not met. It should clarify that CCAs must engage in a factual sufficiency review applying

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[62] *Anderson*, 83 M.J. at 299.
[63] *United States v. Wheeler*, 85 M.J. 70, 78 (C.A.A.F. 2024).
[64] *Anderson*, 83 M.J. at 299 (quoting *United States v. Weiss*, 510 U.S. 163, 177 (1994)).

subparts (B)(ii) and (B)(iii) *only after* that triggering requirement is satisfied—not in assessing whether the triggering requirement is met.[65] This Court should further find that Appellant met part (i)'s triggering requirement and that he is entitled to factual sufficiency review.

Relief Requested

Appellant respectfully asks this Court to reverse the NMCCA's decision and remand the case for factual sufficiency analysis under parts (ii) and (iii) of Article 66(d)(1)(B).

Respectfully submitted.

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[65] Art. 66(d)(1)(B), UCMJ (effective Jan. 1, 2021); *United States v. Harvey*, 85 M.J. 217, 130-32 (C.A.A.F. 2024).

Certificate of Filing and Service

I certify that the foregoing was filed electronically with this Court, and that copies were electronically delivered to Deputy Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on April 17, 2025.

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Certificate of Compliance with Rule 24(d)

This brief complies with the type-volume limitations of Rule 24(c) because it does not exceed 14,000 words and complies with the typeface and style requirements of Rule 37. The brief contains 4,078 words. Undersigned counsel used Times New Roman, 14-point type with one-inch margins on all four sides.

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