

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

October 1, 2022, to September 30, 2023

The Judges of the United States Court of Appeals for the Armed Forces submit their Annual Report on the administration of the Court and military justice during the October 2022 Term of Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146a, Uniform Code of Military Justice (UCMJ), Title 10, United States Code, § 946a.

THE BUSINESS OF THE COURT

During the October 2022 Term of the Court, the Court issued opinions in 25 of 26 orally argued cases prior to the end of the Term. One case, *United States v. Brown*, No. 22-0249/CG, was carried over into the October 2023 – September 2024 Term of Court. A summary by the Court staff of selected decisions is presented in *Appendix A*. Statistical reporting and graphical representations of the filing and disposition of cases are set forth in *Appendix B*.

At the beginning of the term, the Court remained at a quorum of four Judges. Because a replacement had yet to be confirmed and appointed, Chief Judge Kevin A. Ohlson called upon the Court's Senior Judges pursuant to Article 142(e), UCMJ, to conduct essential business of the Court and hear cases set for argument on the master docket. Senior Judge Andrew S. Effron heard 4 cases; Senior Judge Scott W. Stucky heard 4 cases; Senior Judge Susan J. Crawford heard 4 cases; and Senior Judge Charles E. Erdmann heard 2 cases. The Court resumed normal operations with a full complement of five Judges upon the appointment and taking of the Judicial Oath by Judge M. Tia Johnson on January 3, 2023.

Information pertaining to specific opinions is available from the Court's published opinions and Daily Journal, available on the Court's website. Other dispositions may be found in the Court's official reports, the Military Justice Reporter, and on the Court's website. Additionally, the Court's website contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and information on clerkship opportunities, bar admission, electronic filing, and the Court's library.

RULES OF PRACTICE AND PROCEDURE

During the October 2022 Term, the Court began a long-term effort to overhaul the Court's Rules of Practice and Procedure. Already promulgated are changes to Rules 3A, 13(b), 13A, 15(b), 19(a)(7)(B), 21(b), 21(f), 24(b), 27(b), 36, 37(b)(2), 38(a), 39(a), and the Guidelines for Electronic Filing of Pleadings. These changes and the reasoning behind them can be found on the Court's website.

BAR OF THE COURT

During the October 2022 Term, 158 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 37,942.

JUDICIAL OUTREACH

The practice known as "Project Outreach" was developed as part of a public awareness program to demonstrate the operation of a federal Court of Appeals and the military's criminal justice system. During the October 2022 term, with the consent of the parties, the Court conducted hearings at the University of San Diego Law School and at Naval Base San Diego.

CONTINUING LEGAL EDUCATION AND TRAINING PROGRAM

In May 2023, the Court held its Continuing Legal Education and Training Program at the George Mason University Antonin Scalia Law School in Arlington, VA. The program opened with welcoming remarks from the Honorable Kevin A. Ohlson, Chief Judge, United States Court of Appeals for the Armed Forces. He preceded the following speakers: Colonel Frederic L. Borch III, U.S. Army (Retired), Regimental Historian and Archivist at The Judge Advocate General's Legal Center and School; Colonel Tyesha Lowery Smith, Chief Trial Judge, U.S. Army Trial Judiciary and Chair of the Sentencing Parameters & Criteria Board; Mr. Steven Haight, Chief Deputy Clerk of Court, U.S. Army Court of Criminal Appeals; Lieutenant Colonel James Peter Ferrell, Military Justice and Discipline Directorate; Commander Chad Temple, Criminal Law Division (OJAG Code 20); Major Julie Borchers, U.S. Army Office of The Judge Advocate General; Lieutenant Commander Daniel P. Halsig, Office of Military Justice (CG-LMJ); Professor Suzanne Goldberg, Member of DAC-IPAD; Brigadier General James R. Schwenk, USMC retired, Member of DAC-IPAD; Mr. Gary Korn, Office of Chief Counsel, Department of the

Army CID; Major ReAnne R. Wentz, Associate Professor, Criminal Law Department, The Judge Advocate General's Legal Center and School; Colonel William R. Hagan, U.S. Army retired; Major Daniel F. Rendleman, U.S. Army; Assistant Professor Robert Leider, Antonin Scalia Law School, George Mason University; Professor Ed Swaine, The George Washington University Law School; Professor Laura Dickinson, The George Washington University Law School; and Mr. Martin Mitchell, Veterans Law Judge, Board of Veterans' Appeals.

Kevin A. Ohlson
Chief Judge

John E. Sparks, Jr.
Judge

Gregory E. Maggs
Judge

Liam P. Hardy
Judge

M. Tia Johnson
Judge

APPENDIX A

United States v. Hasan, __ M.J. ____ [C.A.A.F. 2023]. In a 118-page opinion, the Court addressed eleven issues briefed by the Appellant in this mandatory review case. After carefully considering his raised issues and the record, the Court concluded that Appellant was not entitled to relief and affirmed the judgment of the lower court, to include a sentence to death.

United States v. Jeter, __ M.J. ____ [C.A.A.F. 2023]. The question in this case was whether it is appropriate for a convening authority to consider race when deciding which members should be appointed to a court-martial panel. The majority found that this Court's precedent, allowing a convening authority to depart from the panel selection criteria in Article 25, UCMJ, was no longer good law. The Appellant made an un rebutted showing that race may have entered the selection process, requiring reversal of his conviction. The dissent agreed with both the trial judge and lower court that Appellant had not shown the convening authority acted improperly or that racial discrimination occurred.

M.W. v. United States, __ M.J. ____ [C.A.A.F. 2023]. The question in this case was whether the Court had the jurisdiction to review a decision of a Court of Criminal Appeals at the request of a "victim of an offense" as that term is used in Article 6b, UCMJ. The Court re-affirmed a prior decision that, despite amendments to Article 6b, it lacks jurisdiction to review a petition filed by a victim of an offense. The Court's decision rested solely on the statutory language of the UCMJ. It does not reflect any policy decision about whether this Court should have statutory jurisdiction.

United States v. Anderson, 83 M.J. 291 [C.A.A.F. 2023]. The question in this case was whether courts-martial defendants have a right to a unanimous guilty verdict under the Sixth Amendment, the Fifth Amendment Due Process Clause, or the Fifth Amendment component of equal protections. The Court determined that court-martial defendants do not have the right to a unanimous guilty verdict.

APPENDIX B

USCAAF STATISTICAL REPORT
OCTOBER 2022 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2022

Master Docket	17
Petition Docket	49
Miscellaneous Docket	<u>2</u>
TOTAL	68

CUMULATIVE FILINGS

Master Docket	49
Petition Docket	238
Miscellaneous Docket	<u>21</u>
TOTAL	308

CUMULATIVE DISPOSITIONS

Master Docket	44
Petition Docket	259
Miscellaneous Docket	<u>20</u>
TOTAL	323

CUMULATIVE PENDING OCTOBER 1, 2023

Master Docket	22
Petition Docket	28
Miscellaneous Docket	<u>3</u>
TOTAL	53

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	23	0	20	43
Petition Docket	0	0	260	260
Miscellaneous Docket	<u>1</u>	<u>1</u>	<u>18</u>	<u>20</u>
TOTAL	24	1	298	323

MASTER DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 17

FILINGS

Petition granted from the Petition Docket	47
Certificates filed	2
Mandatory appeals filed	0
Remanded/Returned cases	<u>0</u>
TOTAL	49

DISPOSITIONS

Affirmed	35
Reversed in whole or in part	4
Certificates dismissed	0
Other	<u>5</u>
TOTAL	44

PENDING AT END OF TERM

Awaiting briefs	8
Awaiting oral argument	7
Awaiting lead case decision (trailer cases)	2
Awaiting final action	<u>5</u>
TOTAL	22

PETITION DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 49

FILINGS

Petitions for grant of review filed	238
Petitions for new trial filed	0
Returned cases	<u>0</u>
TOTAL	238

DISPOSITIONS

Petitions for grant of review denied	206
Petitions for grant of review granted	47
Petitions for grant of review withdrawn	4
Petitions for grant of review dismissed	<u>2</u>
TOTAL	259

PENDING AT END OF TERM

Awaiting pleadings	5
Awaiting staff review	15
Awaiting final action	<u>8</u>
TOTAL	28

MISCELLANEOUS DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 2

FILINGS

Writ appeals sought	11
Writs of habeas corpus sought	1
Writs of coram nobis sought	1
Other extraordinary relief sought	<u>8</u>
TOTAL	21

DISPOSITIONS

Petitions or appeals denied	15
Petitions or appeals granted	1
Petitions or appeals dismissed	4
Petitions or appeals withdrawn	<u>0</u>
TOTAL	20

PENDING AT END OF TERM

Awaiting briefs	1
Awaiting staff review	2
Awaiting final action	<u>0</u>
TOTAL	3

PETITIONS FOR RECONSIDERATION

ALL CASES

Begin pending 2
Filed 7
TOTAL 9

DISPOSITIONS

Denied 7
Granted 0
Dismissed 1
TOTAL 8

End Pending 1

MOTIONS

ALL MOTIONS

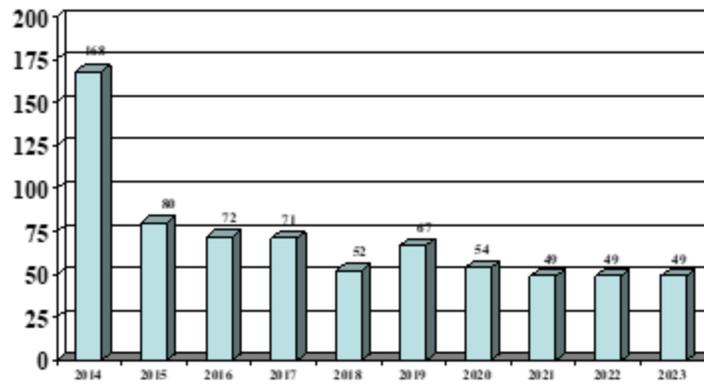
Begin pending 4
Filed 342
TOTAL 346

DISPOSITIONS

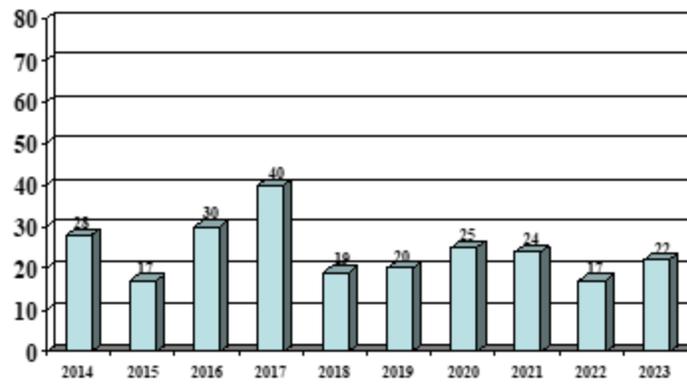
Granted 298
Denied 36
Dismissed 0
TOTAL 334

End Pending 12

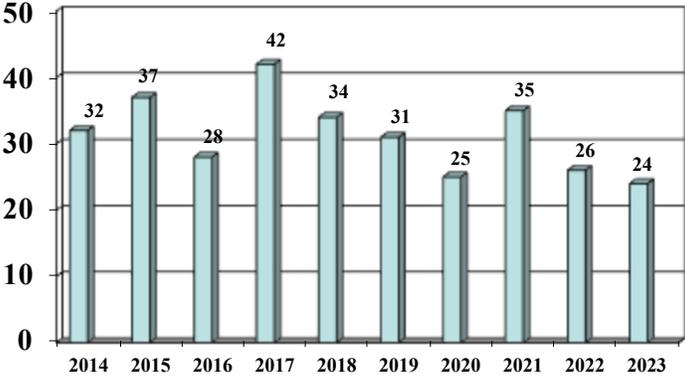
Petitions Pending at End of Term



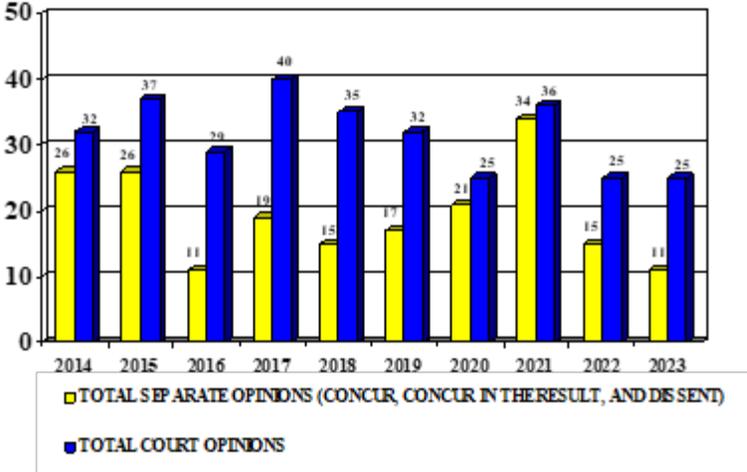
Master Docket Cases Pending at End of Term



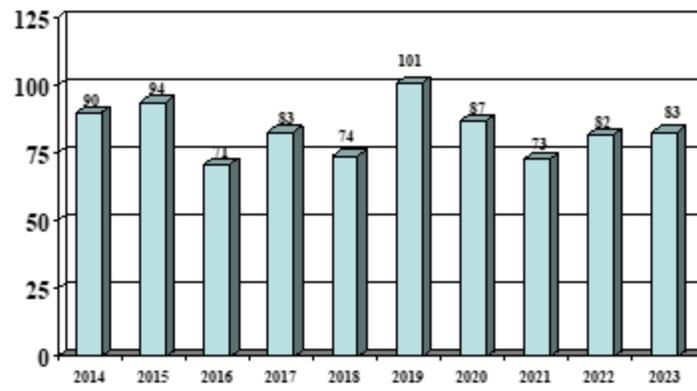
Oral Arguments Per Year



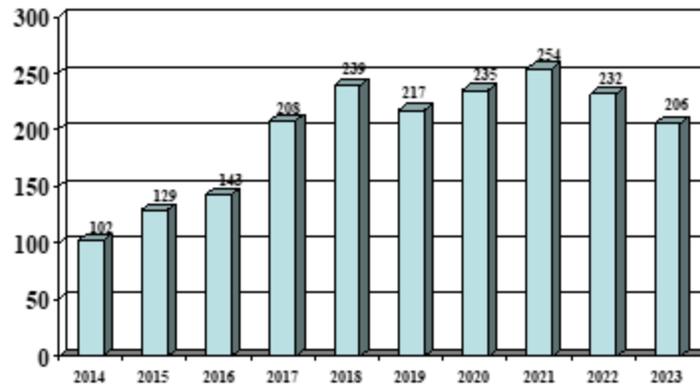
Total Opinions Per Year



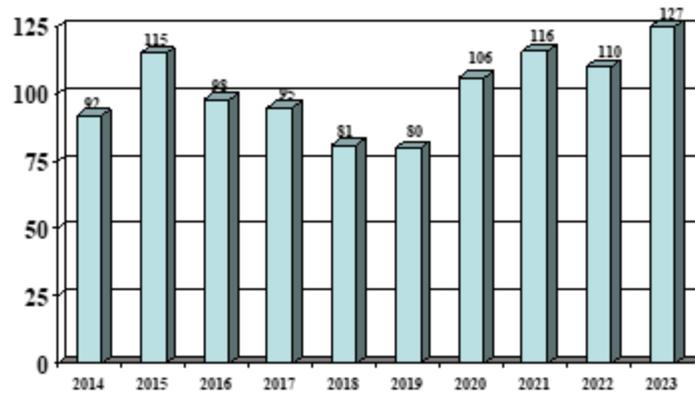
Days from Petition Filing to Grant



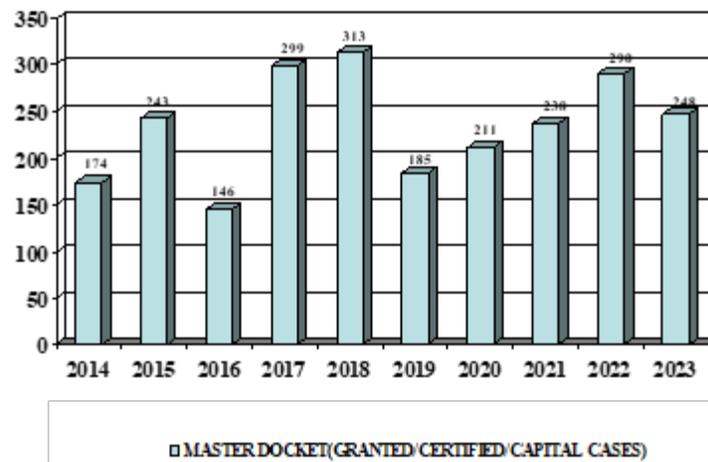
Days from Petition Filing to Oral Argument



Days from Oral Argument to Final Decision



Days from Petition Filing to Final Decision



Total Petitions Filed Per Year

