

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

UNITED STATES,)	APPELLANT’S REPLY TO
<i>Appellee,</i>)	UNITED STATES’ ANSWER TO
)	SUPPLEMENT TO PETITION
v.)	FOR GRANT OF REVIEW
)	
CAMERON N. HOGANS,)	Crim. App. Dkt. No. 22091
Senior Airman (E-4),)	USCA Dkt. No. 25-0119/AF
United States Air Force,)	
<i>Appellant.</i>)	May 6, 2025

On April 14, 2025, the Appellant, Senior Airman (SrA) Cameron N. Hogans, filed his Supplement to Petition for Grant of Review with this Honorable Court. SrA Hogans listed the following assignments of error for review:

I.

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 finding of not guilty and then allowing the Government to reopen its case to establish the missing element that he identified.

The Government filed an Answer on May 2, 2025. United States’ Answer to the Supplement to Petition for Grant of Review (Ans.). The Government generally opposed this Court granting review on the two issues listed above and asked this

Court to grant review on the issue of whether the lower court had jurisdiction to decide the appeal in this case. Ans. at 1 n.1, 3. This reply briefly addresses the Government's argument that there is no jurisdiction while requesting this Court grant on the two errors assigned for review.

The Air Force Court of Criminal Appeals (AFCCA) docketed this case on August 29, 2023. The Government did not file a motion to dismiss for lack of jurisdiction at the AFCCA. Instead, the Government argued that the AFCCA lacked jurisdiction because Article 65(d), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 865(d) (2018), review was complete before the effective date of the amendment to Article 66, UCMJ, 10 U.S.C. § 866(d).¹ The AFCCA did not address the jurisdictional question but analyzed the merits of the assigned errors. *United States v. Hogans*, No. ACM 22091, 2025 CCA LEXIS 19 (A.F. Ct. Crim. App. Jan. 22, 2025).²

As the Government notes, its jurisdictional challenge is an issue already pending before this Court. Ans. at 3 (citing *United States v. Folts*, No. 25-0043/AF, 2025 CAAF LEXIS 170 (C.A.A.F. Mar. 5, 2025)); see *United States v. Vanzant*, No. 24-0182/AF, 2024 CAAF LEXIS 640 (C.A.A.F. Oct. 17, 2024) (granting on the same issue). SrA Hogans agrees that this Court should grant on the jurisdictional

¹ National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA), Pub. L. No. 117-263, § 544(b)(1)(A), 136 Stat. 2395, 2582 (Dec. 23, 2022).

² Provided in the Appendix to the Supplement to the Petition for Grant of Review.

issue, making his case a trailer to *Vanzant* and *Folts*, while also granting on the specified errors in SrA Hogans's supplement.

Of relevance to the jurisdictional issue, this case is distinct from *Folts* and more akin to *Vanzant* because SrA Hogans received a letter from the Government informing him of his right to appeal under the amended Article 66, UCMJ. *See United States v. Vanzant*, 84 M.J. 671, 673 (A.F. Ct. Crim. App. 2024) (highlighting that the appellant received a letter informing him of his right to appeal). On May 31, 2023, the Government sent SrA Hogans the required notice by mail of his right to appeal within ninety days. Notice of Direct Appeal Pursuant to Article 66(b)(1)(A), UCMJ (Aug. 14, 2023); *see* Article 66(c)(1), UCMJ, 10 U.S.C. § 866(c)(1) (as amended by FY23 NDAA) (noting a direct appeal is timely filed under the amended Article 66, UCMJ, if the appellant files his notice of direct appeal within ninety days of being notified). When SrA Hogans submitted his notice of direct appeal to the AFCCA on August 14, 2023 (on day seventy-five out of ninety), he had not submitted any materials to The Judge Advocate General in accordance with Article 69, UCMJ, 10 U.S.C. § 869 (2018), nor was his case already docketed at the AFCCA. Under the FY23 NDAA, these are the only bars to jurisdiction. FY23 NDAA, Pub. L. No. 117-263, § 544(d), 136 Stat. 2395, 2584 (Dec. 23, 2022). Upon receipt of the letter, SrA Hogans was entitled to submit a direct appeal to the AFCCA, which he did.

Every service court has addressed this issue and all have found jurisdiction. *See, e.g., United States v. Mieres*, 84 M.J. 682, 685-86 (C.G. Ct. Crim. App. 2024); *Vanzant*, 84 M.J. at 675-80, *rev. granted*, No. 24-0182/AF, 2024 CAAF LEXIS 640 (C.A.A.F. October 17, 2024); *United States v. Hirst*, 84 M.J. 615, 626-27 (N-M. Ct. Crim. App. 2024); *see also United States v. Young*, No. ARMY 20230128, 2024 CCA LEXIS 383, at *2 n.3 (A. Ct. Crim. App. Sep. 13, 2024) (describing the FY23 NDAA provision at issue as “stating jurisdictional amendments to Article 66 apply to cases *submitted* to this court *on or after* 23 December 2022” (emphasis added)). Judge Brubaker’s well-reasoned analysis concisely explains why jurisdiction exists here:

As can be seen, the provision addressing applicability of the expanded Article 66 in fact only states when it does *not* apply. Of course, one can only submit matters to a CCA or Judge Advocate General in a case where a court-martial judgment has already occurred, so **this provision clearly envisions applicability over judgments that occurred prior to its enactment—just not those pre-enactment cases where matters have already been submitted to a CCA or Judge Advocate General.** *Accord*, Order at 6, 8-9, [*United States v.*] *Cooley*, ACM No. 40376 [(A.F. Ct. Crim. App. Jul 7, 2023),] (citing the canon of statutory construction, *expressio unius est exclusio alterius*^[3]). **Had Congress intended otherwise—such as that the amendments apply only to judgments entered on or after its enactment date—we can expect it would have simply said so.** *See, e.g.*, 136 Stat. 2395 § 5542(c) (“[T]he amendments made by this division shall not apply to any case in which charges are referred to trial by court-martial before the effective date of such amendments.”). Or it could have remained silent on applicability, which may have had the same effect. Order at 6-7, *Cooley*, ACM No. 40376. Instead, Congress explicitly chose to limit pre-enactment

³ This phrase means “the inclusion of one is the exclusion of others.” *United States v. Mooney*, 77 M.J. 252, 257 (C.A.A.F. 2018).

applicability only when the accused, prior to enactment, submitted matters under the old scheme either to the CCA or to TJAG.

Mieres, 84 M.J. at 685-86 (bold emphasis added). Therefore, in line with the plain language of the FY23 NDAA, the AFCCA had jurisdiction over SrA Hogans's case because he did not fall into either exclusion category.

The issue of jurisdiction will be resolved through the cases already pending before this Court, and thus, SrA Hogans requests this Court grant his case as a trailer to those cases, while also granting on the errors assigned for review.⁴

WHEREFORE, SrA Hogans requests this Court grant review.

Respectfully Submitted,



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⁴ Notably, as to the first error assigned for review, the Government asserted it “relies on its brief filed with the [AFCCA] on [May 28,] 2024.” Ans. at 1 n.1. In its initial brief before the AFCCA the Government conceded a discovery violation occurred. Supplement to the Petition for Grant of Review at 16 (citing United States’ Answer to Assignments of Error at 8; Supplement to the Petition for Grant of Review, Appendix at 6 (acknowledging the Government’s concession)). Therefore, on the first assignment of error, the Government has maintained its concession that a discovery violation occurred. This Court should grant to resolve the AFCCA’s erroneous finding to the contrary and assess whether the military judge failed in excluding the video evidence the Government provided at the eleventh-hour.

CERTIFICATE OF FILING AND SERVICE

I certify that I electronically filed a copy of the foregoing with the Clerk of Court on May 6, 2025, and that a copy was also electronically served on the Air Force Government Trial and Appellate Operations Division at af.jajg.afloa.filng.workflow@us.af.mil on the same date.

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CERTIFICATE OF COMPLIANCE
WITH RULES 21(b) & 37

This supplement complies with the type-volume limitation of Rules 21(b) because it contains 1,344 words.

This brief 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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