## STATEMENT OF THE CASE

1. Petitioner was originally tried in 2013. In 2017, the Army Court of Criminal Appeals [ACCA] reversed petitioner's conviction and authorized a retrial.

2. Petitioner was tried again in 2018, and the government took 192 days to arraign petitioner. He subsequently filed a motion to dismiss the charges under R.C.M. 707, the military analogue to the Speedy Trial Act [STA]. *United States v. Leonard*, 21 M.J. 67, 70 (C.M.A. 1985). Under R.C.M. 707(a), the government had 120 days to arraign petitioner from the date it placed him in pretrial confinement. The disposition of the motion turned on whether the time after the trial court received the charges was excludable from the speedy trial clock. Failure to satisfy R.C.M. 707(a) results in a dismissal of charges. R.C.M. 707(d).

3. Denying the motion, the trial judge relied on a now-defunct local Rule of Practice 1.1 of the Army Trial Judiciary, which *automatically* excluded so-called "judicial delay"—the docketing time from when the trial judge received the charges to the date of arraignment. *See* United States Army Trial Judiciary, *Rules of Practice Before Army Courts-Martial*, Rule 1.1 (Nov. 2013). Alternatively, the judge attributed the delay to a scheduling conflict with defense, yet he failed to explain why the *entire* docketing time was attributable when defense trial counsel noted its open availability after the conflicted dates.

3. Petitioner raised the R.C.M. 707 violation to the ACCA, which denied relief. Petitioner then raised this claim to the Court of Appeals for the Armed Forces [CAAF]. The CAAF granted review of a separate claim and authorized a sentence rehearing.

4. While petitioner's case was on remand for a sentence rehearing, the CAAF decided *United States v. Guyton*, 82 M.J. 146 (C.A.A.F. 2022). In *Guyton*, the CAAF questioned the validity of Rule 1.1 as contrary to R.C.M. 707. *Id*. at 153. Ultimately, however, the CAAF left open Rule 1.1's validity as it affirmed *Guyton* on other grounds. *Id*. at 153.

5. Based on *Guyton*, petitioner re-raised his R.C.M. 707 claim when his appeal returned to the ACCA for review. The government contended the claim fell outside the scope of the CAAF's sentencing remand, and the ACCA summarily affirmed petitioner's case.

6. Petitioner re-raised his R.C.M. 707 claim to the CAAF. The CAAF denied review. On reconsideration, petitioner submitted that he satisfied the jurisdictional requirements of "good cause," and that, contrary to the CAAF's decisions, it did not have the discretion to deny review once good cause exists. The CAAF denied petitioner's reconsideration without discussion.

## REASONS FOR GRANTING THE PETITION

The case presents an important question of federal law: what is the scope of the highest military court's mandatory appellate jurisdiction? Article 67(a) states that the CAAF "*shall* review" the record in three categories of cases: (1) capital cases, (2) cases where The Judge Advocate General [TJAG] certifies review, and (3) cases where the petitioner shows "good cause." The essence of the question presented is whether the CAAF's review of the third category of cases is mandated where the petitioner satisfies some objective measure of "good cause" or whether review is completely discretionary as the CAAF has suggested.