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# U.S. Court of Appeals for the Armed Forces: A Brief Introduction

The U.S. Court of Appeals for the Armed Forces (CAAF) provides the exclusive forum for those convicted at courts-martial under the Uniform Code of Military Justice (UCMJ) to appeal the decisions of the Army, Navy-Marine Corps, Air Force, and Coast Guard Courts of Criminal Appeals (CCAs), the military service branches' appellate courts. This In Focus describes the CAAF's creation, jurisdiction, authority, and procedures before identifying issues that may interest the 118th Congress.

## Creation

Using its authority under Article I of the U.S. Constitution, Congress established the CAAF (then called the Court of Military Appeals) on May 5, 1950 (Pub. L. No. 81-506). (For more information on Article I courts, see CRS Report R43746, *Congressional Power to Create Federal Courts: A Legal Overview*.) The National Defense Authorization Act for FY1995 (P.L. 103-337) gave the CAAF its current name. For administrative purposes only, the CAAF is part of the Department of Defense. The statutes governing the CAAF are located in chapter 47, subchapters IX and XII of title 10 of the U.S. Code.

## Jurisdiction and Authority

The CAAF has exclusive jurisdiction over appeals of decisions of the CCAs, which, for their part, have exclusive jurisdiction over appeals of court-martial determinations. Decisions and determinations made within the military legal system concern alleged infractions of the UCMJ, the governing criminal code for the U.S. Armed Forces. The UCMJ applies to active-duty servicemembers; military retirees receiving pay; reserve component and National Guard members under particular conditions; and other individuals delineated in 10 U.S.C. § 802. (For additional information on the military legal system, see CRS Report R46503, *Military Courts-Martial Under the Military Justice Act of 2016*.)

As a general matter, the CAAF reviews legal issues without deference to the determinations of lower courts. In these proceedings, the CAAF is to defer to lower courts' factual findings and only overturn such findings if clearly erroneous.

The CAAF also has the authority under the All Writs Act, 28 U.S.C. § 1651, to issue writs—special types of court orders—to aid its jurisdiction. For example, the CAAF has issued writs of mandamus to compel officials to carry out certain legally required functions and writs of prohibition ordering lower courts to cease activities barred by law.

## Judges

The CAAF consists of five judges, including a chief judge; the most senior judge serves as chief judge. Judges are nominated by the President and confirmed by the Senate for a fixed term of 15 years. (There is no statutory bar on reappointing judges.) Nominations and hearings for prospective CAAF judges proceed through the Senate Committee on Armed Services. Before the expiration of her term, a judge can be removed by the President only for neglect of duty, misconduct, or mental or physical disability. There are currently five active judges on the CAAF.

Judges must be civilians and cannot be appointed to the CAAF within seven years of being a commissioned officer in a regular component of the Armed Forces. Four of the five current judges previously served in the military.

In addition to active judges, the CAAF uses senior judges, who are former CAAF judges that are receiving retirement pay or an annuity for their service. The chief judge may call upon senior judges, with their consent, to perform judicial duties during periods when an active judge is unable to perform her duties due to illness or disability; there is a vacancy on the court; or a judge recuses from a case. There are currently eight senior judges.

The chief judge may request that the Chief Justice of the United States designate an Article III judge of a U.S. court of appeals or district court to perform the duties of a CAAF judge. The chief judge may do this in the same situations in which a senior judge may be called upon to perform the duties of a judge, provided that the chief judge determines that no senior judge is available. The Article III judge and the chief judge of the relevant U.S. court of appeals or district court must consent to such a designation.

## Court Proceedings

Proceedings before the CAAF are adversarial. Government attorneys are appointed to represent individuals by their respective military service; individuals may also retain private counsel. The government is represented by attorneys from the case's originating military service branch. Only attorneys who meet certain requirements may be admitted to practice before the CAAF.

The CAAF generally sits in Washington, DC, but has the authority to sit anywhere in the United States. Several times per year, the CAAF holds oral arguments at law schools and military installations.

## Appeals to CAAF

There are three primary mechanisms by which the CAAF hears cases. First, an accused may submit a *petition for grant of review* of a CCA decision, which the CAAF can grant at its discretion for “good cause shown.” (The government may not petition for review.) At least two judges must vote to grant a petition for grant of review for the CAAF to hear the case. Second, the CAAF must review all cases in which the CCA has affirmed a sentence of capital punishment. Third, the court must review CCA decisions that a military service branch Judge Advocate General orders reviewed by the CAAF. This process is called *certification*, and such cases are called *certified cases*. Between October 2020 and September 2021 (the October 2020 term), the CAAF received 344 petitions for grant of review, of which it granted 52. In addition, the CAAF received four certified cases and two cases requiring mandatory review.

## Petitions for Extraordinary Writs

An accused may petition the CAAF for extraordinary writs that would, for example, compel lower courts and officials to carry out legally required actions or refrain from carrying out legally barred actions. In general, petitioning CAAF for an extraordinary writ mimics the process for petitioning for a grant of review. During the October 2020 term, CAAF received 21 petitions for extraordinary writs but granted none.

## Filing and Recordings

Parties can file case materials with the CAAF on paper or via email. The CAAF records its hearings and makes audio recordings available to the public at no cost.

## Types of Decisions

A panel of all five CAAF judges hears and decides all cases before the court. Most cases include hearings during which the parties present oral argument to the panel. The court grants each party 20 minutes to present their arguments. At its discretion, however, the court can decide cases without a hearing.

The judges regularly meet in conference to discuss recently argued cases and tentatively vote on the outcomes. If the chief judge is in the majority, he or she will assign responsibility for drafting the opinion to a judge in the majority. If the chief judge is not in the majority, the most senior judge in the majority will assign responsibility for the majority opinion. Once the assigned judge drafts a majority opinion, it is circulated among the other judges, who then have the chance to concur, offer comments, or draft and submit separate statements, such as concurrences or dissents. Once all judges have had an opportunity to express their views in writing, the opinion, including any separate statements, is published. During the October 2020 term, the CAAF issued 59 decisions, of which 42 affirmed lower court determinations, 12 reversed (in whole or in part) lower court decisions, and 5 involved other resolutions.

## Appealing CAAF Decisions

The U.S. Supreme Court has exclusive jurisdiction to review the CAAF’s decisions on a direct basis. The Supreme Court can only review military cases that the CAAF has reviewed or in which the CAAF has granted some form of relief. If the CAAF denies review, the Supreme Court does not have jurisdiction to review the case on a direct basis. Any party, including the government, may file a *petition for a writ of certiorari* seeking Supreme Court review of a CAAF decision.

## Collateral Attacks on CAAF Decisions

Federal district courts and the U.S. Court of Federal Claims (CFC) may review CAAF decisions in limited circumstances. At federal district courts, individuals can challenge CAAF determinations through *petitions for writs of habeas corpus*. (For additional information on federal habeas corpus, see CRS Report RL33391, *Federal Habeas Corpus: A Brief Legal Overview*.) At the CFC, individuals can challenge CAAF determinations through claims for military back pay alleging wrongful discharge. Both of these avenues generally entail challenging military courts’ jurisdiction over a case or military courts’ constitutional analyses.

Challenges to military courts’ legal determinations in federal district courts and the CFC do not depend on grant of review by the CAAF. Cases that are denied review by the CAAF can therefore potentially still be reviewed by the Supreme Court following appeals from federal district courts and the CFC to federal appellate courts.

## Issues for Congress

The House and Senate Armed Services Committees, and their respective Subcommittees on Military Personnel, have authorizing jurisdiction over the CAAF. The House and Senate Appropriations Committees, and their respective Subcommittees on Defense, have appropriations jurisdiction over the CAAF.

## Appeals to the U.S. Supreme Court

Currently, the U.S. Supreme Court has jurisdiction over direct appeals of CAAF decisions only if the CAAF reviews the case in question. Since most of CAAF’s decisions result from petitions for grant of review, and since the CAAF denies most of those petitions, the Supreme Court does not have direct appellate jurisdiction over most military cases. Proponents of the current scope of review argue that it enables quicker final decisions in military cases and gives a court with special competence in military law substantial authority over military legal matters. Conversely, some argue that this limited review affords servicemembers less access to Supreme Court review than civilians. In light of these arguments, Congress may consider the scope of the Supreme Court’s jurisdiction over military cases as delineated in 28 U.S.C. § 1259.

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