S. HRG. 119–529

HEARING TO CONSIDER PENDING NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINETEENTH CONGRESS

SECOND SESSION

SEPTEMBER 23, 2026

Printed for the use of the Committee on Veterans' Affairs



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HEARING TO CONSIDER PENDING NOMINATIONS

WEDNESDAY, SEPTEMBER 23, 2026

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 4 p.m., in Room SR–418, Russell Senate Office Building, Hon. Jerry Moran, Chairman of the Committee, presiding.

Present: Senators Moran, Cassidy, Sheehy, Blumenthal, Hassan, King, and Duckworth.

OPENING STATEMENT OF HON. JERRY MORAN, CHAIRMAN, U.S. SENATOR FROM KANSAS

Chairman MORAN. Good afternoon. I am going to be solo at least for a while. Senator Blumenthal is expected to be here but not at the start of our hearing, and I will welcome him when he arrives. And we have other members who told us they will be here, but maybe not on time.

But this is not an unimportant hearing, and we are delighted and appreciative of you being here.

We are here to consider the nominations of the Honorable Maria Lopez, to be Chair of the Board of Veterans' Appeals, and Robert Fleck, David Jones, Daniel Rendleman, and James Quinn to be judges for the United States Court of Appeals for Veterans Claims. I appreciate all five of these nominees being here today and discuss with them their interest in and qualification for their roles.

The Board of Veterans' Appeals and the Court of Appeals of Veterans Claims serves a vital purpose; to make certain that the VA is rending fair and lawful decisions about the benefit that veterans and their families are entitled to, in accordance with applicable statutes, regulations, and congressional intent. These institutions provide a critical avenue for the accountability and due process for veterans and their families nationwide. In recent years, the volume of appeals have increased significantly as more veterans and beneficiaries opt to use this resource to appeal decisions on their disability compensation claims, the GI Bill, survivors and caregiver benefits, and many other items, as well.

The men and women whose nominations are under consideration this afternoon each have extensive records in public service, through serving in the military, the justice system, executive branch, and in the halls of the United States Senate. I look forward to learning more about how these nominees plan to continue their

service in these rules and, if confirmed, what they plan to achieve on behalf of veterans and their families.

I have long emphasized the importance of transparency in the appeals process as well as the need to avoid unnecessary delays or burdensome steps that do not help advance a veteran's, caregiver's, or family member's cause. I look forward to hearing from the nominees this afternoon about how, if confirmed, they plan to improve the appeals process on each of those fronts and how they would make certain that veterans and their loved ones are equipped, a thorough understanding of the status of their appeals, and what they can expect as the appeal moves forward.

Thank you again to you all for being here and your willingness to serve, if confirmed.

I will take Ranking Member Blumenthal's opening statement when he arrives, and let me see what the latest development is. Okay. We are going to start with Ms. Lopez. Oh here he is. We are actually going start with Dr. Cassidy, who is going to introduce, as soon as we swear the witnesses in.

If you all would stand and raise your hands. Please raise your hand.

[Hands raised.]

Do you solemnly swear or affirm that the testimony you are about to give before the U.S. Senate Committee on Veterans' Affairs will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. LOPEZ. I do.

Mr. FLECK. I do.

Mr. JONES. I do.

Mr. RENDLEMAN. I do.

Mr. QUINN. I do.

Chairman MORAN. The record should note all said "I do." You may take your seats, yes.

Now I would like to recognize Senator Cassidy for an introduction of someone he knows well.

INTRODUCTION BY HON. BILL CASSIDY, U.S. SENATOR FROM LOUISIANA

Senator CASSIDY. It is my great privilege to introduce James Quinn, who happens to be my Chief of Staff, so I can say I know James pretty well. James, you have my vote.

And during my time in the U.S. Senate I have had the privilege of introducing many people who are under active consideration for Federal office, and I often begin by highlighting temperament, academic rigor, strength of character, and passion for public service. And these are important attributes. But just as Felix Frankfurter stated that, "what makes for an effective judge," in simpler terms, a judge, he wrote, "should be a lawyer, of course, but above all a statesman."

James has all these qualities and many more. He has served alongside me as my Chief of Staff when I was in the House, now in the Senate, for a total of 17 years. And you get to know somebody pretty well. For nearly two decades, James has given wise counsel. I have relied on him to assemble a top-notch staff, to be

oil and water, to make sure that things were happening on an even keel, and our country is better off for it.

Remaining in public service, he helped marshal efforts in mind toward achieving wins for the American people and for the State of Louisiana, and much of that is taking shape on this Committee, as I first joined this Committee in 2015.

Mr. Chairman, you and I have worked together on several bills to make the VA more accountable, transparent, and accessible to our Nation's veterans, and Ranking Member Blumenthal and I introduced the Informing VETS Act to help veterans with disabilities learn about the education benefits available to them, and also worked together to craft a Veterans Appeals Improvement and Modernization Act 2.0, which streamlines the appeals process for beneficiaries.

Through all this, James has worked with me to make sure that all this takes place. He has contributed to my work on this Committee, to our work on this Committee, and he has had his hand in some 2,000 constituent cases serving Louisiana veterans. Hands-on involvement in veteran casework, and legislative process which that casework informs has prepared James well for service on the court that is charged with implementing this Committee's work out in the world.

Mr. Chairman and Mr. Ranking Member, I have great confidence that James is equal to the task of addressing our Nation's veterans with care while giving effect to the laws that originate in Congress. He will make an excellent judge on the United States Court of Appeals for Veterans Claims.

I fully support his nomination, and I do not stand alone. I am pleased to share with the Committee that I have with me a letter in support of James' nomination written by my colleague, Senator John Kennedy, and sir, I request unanimous consent that it be submitted in the record.

Chairman MORAN. Without objection.

[The letter referred to appears on page 29 of the Appendix.]

Senator CASSIDY. With that I yield.

Chairman MORAN. Senator Cassidy, thank you very much for the introduction. Senator Cassidy, you are a valuable and knowledgeable, experienced Member of this Committee, and you have credibility in your comments. But I also am interested if he shares the support of your spouse, the other Dr. Cassidy.

Senator CASSIDY [laughs]. She is the reason that I hired James in the first place. We had multiple people, and of course once more she was right. But that is why his original hire on my staff was her kind of, "Yes, James is the guy."

Chairman MORAN. Well, Senator Hassan and Senator Duckworth are present. I want to again thank you for your service on this Committee. I expect us to be meeting during periods of time for the remainder of your term, and I look forward to us congratulating you and wishing you well in your future.

Senator CASSIDY. Thank you.

Chairman MORAN. Mr. Quinn, you are now recognized.

STATEMENT OF JAMES L. QUINN, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS FOR A TERM OF FIFTEEN YEARS

Mr. QUINN. Chairman Moran, Ranking Member Blumenthal, and distinguished Members of this Committee, thank you for the opportunity to appear before you today. I want to thank the President for nominating me to be a judge on the Court of Appeals for Veterans Claims.

First, I want to acknowledge several people who have guided and supported me throughout my career. With me here today is my wife, Shannon, who is a caring and generous educator in the Arlington Public School System, and our two amazing children who got to have the afternoon off from school today. I love you very much. I also want to thank my parents, Patrick and Gail, who taught me to have a sense of public service and how important it is to extend a helping hand to those that need it. I also want to recognize my siblings who I love and never get enough time to be in their company—Frank, Claire, Daniel, Spencer, and Ashton. I also want to mention my in-laws, Glenda and Jules, who are both veterans and have supported me through the years, even when I took their daughter from Louisiana to Washington, DC.

Finally, I would like to thank my home state Senators. I especially want to thank Senator Cassidy who introduced me today. He took a chance on me and gave me the opportunity to work in Congress so that we could try to make our state and country a better place. I will always be grateful. Senator Kennedy graciously sent a letter of support on my behalf. Thank you, Senator.

During my 17-year career as a congressional staffer, I have had the privilege of working on veterans issues. I have had the honor of supervising a casework team that has handled thousands of constituent claims for benefits. This has taught me the how the VA claims process works, from the initial filing for benefits, the choices the veteran has to make through the modern AMA system, and most importantly how a veteran feels when they believe they are not being treated fairly by a system that was designed to help them. The VA process can be daunting to someone who is unfamiliar with its internal procedures, but with patience and understanding I believe I have made a difference in veterans' lives by learning the system myself. There is no better feeling as a staffer than when you hear that a veteran was granted the benefits they deserve.

I have also seen firsthand the laws that Congress has passed to transform the way the VA handles claims. The passing of the AMA in 2017 and its implementation in 2019 has changed the way veterans apply for benefits. The PACT Act has dramatically expanded the pathways for veterans to claim the benefits they are lawfully entitled to. I have had a front row seat in seeing bills pass the Veterans' Affairs Committee for the last 12 years, and in doing so have unique and valuable knowledge on how Congress intended for these bills to be implemented.

These experiences have provided me with a strong foundation that I believe would allow me to quickly adapt to the Court. If confirmed, I promise to do the work diligently, impartially, and with a sense of fairness to all that I would encounter. Veterans and

their families deserve judges that will go to work every day trying to hear cases timely and accurately. If confirmed, I intend to honor their sacrifice by being the best judge I can be.

I would be happy to answer any questions.

[The prepared statement of Mr. Quinn appears on page 69 of the Appendix.]

Chairman MORAN. Mr. Quinn, thank you very much. We will now turn to Ms. Lopez, and you, ma'am, are recognized for 5 minutes.

STATEMENT OF HON. MARIA LOPEZ, TO BE CHAIRMAN OF THE BOARD OF VETERANS' APPEALS FOR A TERM OF SIX YEARS

Ms. LOPEZ. Thank you, Chairman. Good afternoon. Chairman, I was going to greet the Ranking Member but I will do that when he comes in, and distinguished Members of the Committee. Thank you for the opportunity to appear before you today. It is a profound honor to be nominated by President Trump to serve today as Chair of the Board of Veterans' Appeals.

I also want to thank this Committee for its longstanding commitment to our Nation's veterans and to strengthening the system that delivers the benefits they have earned through their service and sacrifice. Service to our country, and to those who have worn the uniform, is deeply personal to me and to my family.

I had the privilege of serving as an officer in the United States Army. My husband is also an Army veteran, and he continues his commitment to public service today as a law enforcement officer. And he was not able to join me today so I want to take a moment to thank him for all the years of support. We have been married 26 years, and he supported me throughout my entire career, so I wanted to take a moment to thank him. My niece also has followed in my footsteps in that she is a veteran of the United States Air Force. Like so many American families, service to our Nation is woven into our lives, and we understand both the sacrifices made by those who serve and the promises our country makes to them in return.

I am also the proud daughter of immigrants and a first-generation American. The opportunities this country has provided to me and to my family are the embodiment of the American dream. My life and career have been shaped by the values of hard work, service, faith, and gratitude to this great Nation and the opportunities that it continues to offer me. Public service has always been my way of giving back to the country that has given so much to me and to my family.

Throughout my career, I have tried to honor those values through public service. As a Federal prosecutor, and later as the United States Attorney for the Middle District of Florida, I had the privilege of leading one of the largest United States Attorney's Offices in the country. I have also led in the Army, where I served as a Judge Advocate, advising commanders and helping guide legal decision-making in complex and high-stakes environments.

My experience at both the Department of Justice and in the United States Army taught me that successful stewardship of large, mission-driven organizations requires principled leadership,

disciplined processes, accountability and, most of all, respect for the people that are carrying out that mission.

For a large share of my professional life, I have managed large teams responsible for legal decisions that profoundly affect people's lives. I also understand that supporting a professional, motivated workforce is essential to ensuring those decisions are timely, consistent, and grounded in law.

As both a United States Attorney and as an Army JAG officer, I was entrusted to exercise objective judgment based on the law and the facts, without undue influence, and to uphold the integrity of the institutions I served. My commitment has always been to the law, to the facts of each case, and to the people we serve, and that is exactly how I would approach this role as well, if confirmed.

In my view, these same principles are essential to the work of the Board of Veterans' Appeals. For many veterans and their families, the Board represents their final opportunity within the Department of Veterans Affairs to receive a full and fair review of their claims. Every appeal represents a veteran or family seeking a fair answer from the system created to serve them. They deserve decisions that are thoughtful, that are legally sound, and delivered without unnecessary delay.

In advance of this hearing, I have become familiar with the substantial improvements in VA care and benefits during the first 18 months of this Administration, and also with your efforts. I know the Secretary, the VA leadership, and the Board are committed to doing even more. I fully recognize the value and importance of continuing efforts to improve the timeliness of decisions while maintaining the high standards of legal review that our veterans deserve.

If confirmed, I will commit myself to supporting continuous efforts to promote further efficiency, consistency in decision-making, and responsible stewardship of the Board's resources in ways that best serve the needs of veterans and their families that we are sworn to serve. As Chair, I would also be committed to ensuring the Board continues to operate as a fair and independent adjudicatory body while working collaboratively with the Department, this Committee, and veterans service organizations to serve our veterans effectively.

If confirmed, my priority will be to support the dedicated veterans law judges and professional staff of the Board in carrying out this critical mission, ensuring fairness, efficiency in the process, consistency in the application of the law, and respect for due process.

Recently our Nation observed Memorial Day and commemorated the anniversary of D-Day, and celebrated the 250th anniversary of our great country, reminding us once again of the extraordinary courage and sacrifices of the men and women who have defended our freedoms across generations. Our veterans stepped forward when called upon to serve. If confirmed, it would be the honor of my life to step forward to serve them in return and help ensure that our Nation keeps its promise to those who have worn the uniform.

Thank you for the opportunity to appear before you today, and I welcome your questions.

[The prepared statement of Ms. Lopez appears on pages 99–101 of the Appendix.]

Chairman MORAN. Ms. Lopez, thank you very much. Mr. Fleck.

STATEMENT OF ROBERT R. FLECK, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS FOR A TERM OF FIFTEEN YEARS

Mr. FLECK. Thank you. Good afternoon, Chairman Moran, Ranking Member, he is not here, and distinguished Members of the Committee. Thank you for the opportunity to appear today for your consideration to be a judge for the Court of Appeals for Veterans Claims. I would like to thank President Trump for nominating me for consideration, and thank Mr. Collins, the Secretary of Veterans Affairs, for the support. If confirmed, I will make every effort to provide veterans with the benefits they have earned in a timely manner.

My professional and personal experiences have thoroughly prepared me for this role. Over my 46 years as an attorney and 30-year career in Federal service, I have built a legacy of transformative leadership and unwavering dedication to advancing the interests of soldiers and veterans.

I currently serve as Deputy General Counsel in the Department of Veterans Affairs. Over the course of my legal career, I have represented individuals, government entities, corporations, and Federal Government agencies. I have handled complex litigation, administrative law, and veteran-related cases. These experiences have provided me with a deep understanding of legal processes as well as the unique challenges veterans face. My qualifications enable me to approach each case with expertise and a strong commitment to justice.

Recently, as Deputy General Counsel for the VA, I have led efforts to improve medical care access for veterans and improve many systems serving veterans. As I stated, this year will be my 30th year of government service. Throughout my career, I have been guided by a singular focus: serving those who serve our country.

I have profound respect for those who have served our country. Working alongside soldiers and veterans has fostered in me patience and a strong sense of duty. These qualities, combined with my legal experience, drive my desire to serve as a judge and ensure fair outcomes for those who have dedicated themselves to our Nation.

I look forward to your questions, and thank you.

[The prepared statement of Mr. Fleck appears on page 133 of the Appendix.]

Chairman MORAN. Mr. Fleck, thank you. Mr. Jones.

STATEMENT OF DAVID M. JONES, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS FOR A TERM OF FIFTEEN YEARS

Mr. JONES. Chairman Moran, Ranking Member Blumenthal, and distinguished Members of this Committee, thank you for the opportunity to speak with you today. I am honored and grateful that the

President has nominated me to serve as a judge on the United States Court of Appeals for Veterans Claims. I am also humbled by the possibility of the great task before me—ensuring that our Nation meets its sacred responsibility to our veterans and their families. These are the individuals that have taken an oath to support and defend our Constitutional Republic, many of whom have, as President Lincoln described them at the end of the Civil War, "borne the battle" on behalf of our country. I can think of no higher calling.

I have had the privilege of serving my country for the past 20 years in the United States Army as a Judge Advocate, both a soldier and a lawyer, in a variety of assignments in a variety of locations.

But my service was not mine alone. I have had the support of my amazing wife, April, who is with me here today. Her tireless support and love for our family always inspires me, and I have admired and appreciated her own service and sacrifice for her country and community, as a social worker, public school teacher, and civil servant. I have had the love and support of our five children. I am thankful to have the youngest three with me today, as my oldest son is away at college, and my other son has just reported to his first duty station in Portland, Oregon, after graduating from Coast Guard basic training a few weeks ago. Regardless of what title I have held or will hold in my life, my family has given me the title I most cherish, that of husband and father. I am extremely blessed and love them all more than anything in this world.

I have also had the privilege of growing up with amazing examples of selfless service to our country, starting with my dad, Senior Chief (Retired) William Jones Sr., who spent 30 years in the U.S. Navy and Coast Guard, and my mom, Joyce Jones, who faithfully supported his service while lovingly caring for a family of six children. They remain the greatest influences in my life. My three older brothers, who followed in our dad's footsteps and answered the noble call to serve their country, by enlisting in the Coast Guard, Army, and Marine Corps out of high school. My brother, Rob, the Marine, is here with me today.

These examples of my family's service extend beyond those wearing a military uniform, as my two sisters serve their communities as a teacher, married to a police officer, and a nurse, married to a firefighter. The Jones family's love for our country and service to it makes me immensely proud. Their example has led me to where I am today sitting in front of you.

After serving my country for two decades in uniform, I am honored to be considered for continued service on the Court of Appeals for Veterans Claims.

I thank you for your consideration, and I would be glad to answer any of your questions.

[The prepared statement of Mr. Jones appears on page 217 of the Appendix.]

Chairman MORAN. Thank you. Mr. Rendleman.

STATEMENT OF DANIEL F. RENDLEMAN, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS FOR A TERM OF FIFTEEN YEARS

Mr. RENDLEMAN. Thank you Chairman Moran, Ranking Member Blumenthal, and distinguished Members of the Committee. It is my great honor to come before you as a nominee for the United States Court of Appeals for Veterans Claims. For that I am grateful, grateful to the President for nominating me, and thankful to this Committee for inviting me here today.

In truth, if I were to review my life and career thus far, thankfulness is perhaps the only appropriate attitude for me to adopt. I was raised in the cradle of the Prairie State where my loving mother and father not only bestowed upon me the blessings of American liberty but taught me to appreciate the causes of that bounty. I learned early on about the debt that I owed, a debt to the American servicemember who, in every generation, has fought and bled that such freedom may long endure; to the statesmen and patriots who, when the initial struggle for freedom and independence was won, carefully crafted our government's founding document, that sole source and guarantee of national freedom; to the countless American citizens who have added their voice and the work of their hands to the improvement of our Republic; and, of course, to that Providence which once transplanted upon these shores the seed of limited government and, to this day, sustains it.

A proper appreciation for the unearned blessings of my American birth led me to the United States Army, and that decision has determined my professional life ever since. I commissioned as an Army Aviator, learned tolerably well how to handle the AH–64 Apache helicopter, and deployed to combat in Afghanistan with the 1–101st "Expect No Mercy" Battalion, where my duty ultimately, was the protection and success of the American soldier.

The Army sent me to law school and my office changed from a cockpit to a courtroom, but that guiding principle never changed. Whether serving as a prosecutor, or advising a commander, or defending a soldier accused at court-martial, the welfare of the American soldier and the success of our arms has been at the forefront of my efforts.

A judge's responsibility to a party come into his court is quite different than that of a pilot providing air support. The veteran is ultimately best served by a judge who examines each case in turn, objectively, without bias, and faithfully applies the law, as promulgated by the political branches, to the facts. If confirmed, I commit to doing just that.

I would be remiss if I did not mention here one remaining cause of my gratitude. Katherine Rendleman, my wife, has spent the last 18 years supporting this particular servicemember, upending her world to move almost a dozen times, and raising our six children, who have never known any but an Army life. She, like so many others in her shoes, deserves the love and thanks of man and woman, and she has mine.

I would be more than happy to answer any questions you may have.

[The prepared statement of Mr. Rendleman appears on page 315 of the Appendix.]

Chairman MORAN. Thank you all very much for your opening statement. I am going to turn now to the Ranking Member, Senator Blumenthal, for any comments he would like to make before we have a round of questioning. Senator Blumenthal.

HON. RICHARD BLUMENTHAL,
RANKING MEMBER, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you, Mr. Chairman. I would like my full statement to be entered into the record.

Chairman MORAN. Without objection.

[The opening statement of Senator Blumenthal appears on pages 30–31 of the Appendix.]

Senator BLUMENTHAL. I will condense it. Thank you, each of you, for your willingness to serve. I am just going to be very blunt. I am gravely concerned that none of these nominees have any experience with veterans benefits law whatsoever, not as judges, not as lawyers, not as advocates for veterans.

Ms. Lopez, if confirmed, you would be responsible for ensuring that the Board of Veterans' Appeals makes accurate, timely decisions on veteran appeals. The Board has been able to hire substantially more judges, attorneys, and staff, thanks to bipartisan investments by the Congress, but this Administration has cut the Board's budget, instituted a hiring freeze, and pushed out many of its employees and senior leaders. I want to know from you that you will stand up for the interests and values that Congress has sought to implement here.

Turning to the Court of Appeals for Veterans Claims, you will have an interest, likewise, in the public interest. Mr. Fleck, you were found by VA's Office of Inspector General to have engaged in nepotism when, as manager in the Office of General Counsel, you advocated for the employment of your wife in the same office. You will have to explain to the Committee why the report, done by the Office of Inspector General, is not disqualifying. And I appreciate the Chairman's staff subsequently sharing the documents and information with us, which should prompt all of us to have very strong concerns, and I intend to make further enquiries about this issue. We have a constitutional duty of oversight.

Mr. Rendleman, if confirmed, you would have the power to decide whether a veteran's claim for reproductive health care coverage or reimbursement is denied. The radical, anti-abortion views that you have espoused call into question your ability to make impartial judgments on abortion-related claims. And I would like to enter into the record, Mr. Chairman, a letter from 30 organizations, including the National Women's Law Center, Minority Veterans of America, the National Organization for Women, Common Defense, Physicians for Reproductive Health, and other organizations that have substantial numbers of veteran members, or represent them, concerned about Mr. Rendleman's nomination.

Chairman MORAN. Without objection.

[The letter referred to appears on pages 32–34 of the Appendix.]

Senator BLUMENTHAL. Thank you. I am concerned that we are considering Mr. Quinn for a position that will not open until next Congress, which is, I think, unprecedented in this Committee. In November, the American people will determine at the ballot which party should lead the Senate. I am not pre-judging what the outcomes will be, but the new Congress should provide advice and consent on positions that will open when there is another Congress.

Finally, Mr. Chairman, before we get started I would like to address a really urgent and critical topic. The VA recently raised the ceiling for its electronic health record contract with Oracle by $17 billion—$17 billion—without any notice to Congress or taxpayers. That is more than, by the way, the $13 billion cost estimate for the Major Richard Star Act, which some of my colleagues claim we cannot afford without cutting benefits for other disabled veterans. I think we have bipartisan support for the Major Richard Star Act. But $17 billion for Oracle, to extend a deeply troubled contract I think demands inquiry from this Committee. So I would like to formally request the Chairman hold a hearing on implementation of the electronic health record contract, and I have a letter for the record signed by all Democratic Members of the Committee with that request.

[The letter referred to appears on pages 35–36 of the Appendix.]

Chairman MORAN. Mr. Ranking Member, we have not, you and I, at least personally, visited about that topic of a hearing, but I have planned to have a hearing upon our return in November on this topic.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Chairman MORAN. Anything further?

Senator BLUMENTHAL. No.

Chairman MORAN. Senator Blumenthal, thank you. We will now turn to questions. I am interested in how the position that you have been nominated to fill came to you? Ms. Lopez, what came into your life that caused you to agree or decide you wanted to pursue the job you have been nominated to do?

Ms. LOPEZ. Well, Senator, thank you for the question.

Chairman MORAN. How did the Administration come to know you?

Ms. LOPEZ. They came to recall my name because I served under President Trump under the 45th administration as United States Attorney. So, my name was refreshed to him through my colleague, Bobby L. Christine, the Judge Advocate General of the Army, who served as United States Attorney in Georgia. So my name came through that, through those channels. And I literally was here in D.C. last October for the National Association of Former United States Attorneys when I got the call from the White House about this position.

Chairman MORAN. Mr. Fleck, you are at the Department of Veterans Affairs. You have been known within the Department. How did the Administration decide, of all the people who work at the Department of Veterans Affair, that you should be nominated for this position?

Mr. FLECK. Mr. Chairman, I do not know how they came to ask me if I would be willing to serve, but I was asked by the Acting

General Counsel at that time would I be interested in serving, and that is how I was approached.

Chairman MORAN. Acting General Counsel at the Department?

Mr. FLECK. At the Department of Veterans Affairs, yes.

Chairman MORAN. And Mr. Fleck, is there anything that I should have concerns about your ability to set aside your employment at the Department of Veterans Affairs, your relationships with people who work there, the leadership that has put you in your place in making decisions about veterans' cases that appear before you?

Mr. FLECK. No, sir. For 46 years as an attorney, I have always looked at the law and the facts and applied them accordingly. I have not been taken away from that course of action by public opinion or by a hostile client or a client wanting to do something differently.

Chairman MORAN. Or political pressure?

Mr. FLECK. Or political pressure, sir.

Chairman MORAN. Mr. Jones, you arrived here today because someone thought you worthy of this position. Tell me how that happened.

Mr. JONES. Thank you, Mr. Chairman. In January of this year I hit 20 years in the military, and so my wife and I, after lots of discussions and prayer, decided it was time to submit my retirement packet. And I was looking for continued opportunities to serve. At the time I was detailed to the White House Counsel's Office, a position I had been detailed by the Army in the first Trump administration. So through those relationships they asked me if I would continue to serve in this position, if I would consider it.

Chairman MORAN. I do not know that it is the same question that I asked Mr. Fleck, but I am going to ask it of the same circumstances, your ability to set aside your association with a White House and an administration and make decisions based upon the merits of fact, rendering justice in individual cases is unimpaired?

Mr. JONES. Absolutely, Mr. Chairman. I mean, I have served for 20 years under four different Presidents. My duty has always been to the Constitution.

Chairman MORAN. Thank you. Mr. Rendleman?

Mr. RENDLEMAN. Thank you, Mr. Chairman. I do not know the full origins of how my name got recommended to the White House Counsel's Office, but my first contact was when they reached out to me.

Chairman MORAN. Mr. Quinn?

Mr. QUINN. Thank you, Mr. Chairman. After 17 years of working on veterans issues, I have grown a passion for this area of the law. I have always been interested in it, and I certainly want to continue public service. I had obviously been very aware of this Court, especially after the passing of the AMA in 2017 and its implementation in 2019. I have been following it closely. And once I noticed there were some vacancies, I reached out to the White House Counsel's Office and let them know of my interest.

Chairman MORAN. Thank you. I suppose only to be fair I should ask you if you would assure me that you will not be inappropriately persuaded or influenced by Members of Congress for whom you served or worked with in reaching decisions before the Court?

Mr. QUINN. I promise, Senator.

Chairman MORAN. Thank you. Let me turn to the Ranking Member for his questions.

Senator BLUMENTHAL. Thank you, Mr. Chairman. Mr. Fleck, you claim to have led VA's removal of veterans' records from the FBI's National Instant Criminal Background Check System (NICS), without assessing the dangerousness or underlying mental health conditions of those veterans. As I am sure you know, firearms were involved in roughly 73 percent of male veteran suicides, 51 percent of female veteran suicides, both far above the general population. When advising the Secretary, how do you justify removing veterans from the NICS, in light of the VA's own data on how disproportionately firearms are involved in veteran suicide?

Mr. FLECK. Sir, thank you. We—and I recommended that we submit the names to the FBI to consider for removal from the NICS. We do not remove them. The FBI goes through other checks. But the reasoning for that is——

Senator BLUMENTHAL. How do you evaluate those individuals? Do you review medical records? Do you go case by case?

Mr. FLECK. No, sir. We looked at how they were put forth to the NCIS. The only thing that, the ones that we recommended for removal, the only thing they had on record was a box checked saying they were not able to handle their finances. And there was no court of adjudication of mental incompetency, as the statute requires.

Senator BLUMENTHAL. Well, it is not a question of mental incompetence. It is a question of mental illness. How do you justify policies that deeply endanger veterans from suicide?

Mr. FLECK. Well, I think there is a balance between taking away someone's constitutional rights and having due process applied to do that, with the adjudication as the statute requires.

Senator BLUMENTHAL. Let me ask you, the VA's Office of Inspector General found that you violated laws and regulations related to nepotism, conflict of interest, confidentiality, and making false statements to investigators. I want to give you the opportunity to respond, because I understand you dispute the OIG's findings. So let me just ask you plainly, did you ever discuss the employment of your wife at VA's Office of General Counsel while you were employed as a supervisor in the VA's Office of General Counsel?

Mr. FLECK. My supervisor at the time, Deputy General Counsel, asked me about my wife, and I said I have no comment on it, and then he asked me to send him her résumé. That is the only contact I did.

Senator BLUMENTHAL. So is it your testimony that you recused yourself from your wife's hiring?

Mr. FLECK. Yes, I did, on the first mention of her name, yes.

Senator BLUMENTHAL. Did you ever share sensitive VA data with your wife before she was an official employee?

Mr. FLECK. Yes, sir, I did. She was an Army attorney, and I do not think that is highlighted in the report, with a decade of experience as an Army attorney. And I shared with her to prepare for the job after she had advised me she received a call that she was going to get an offer for employment.

Senator BLUMENTHAL. Did the OIG ever reverse any of its findings that you violated these laws?

Mr. FLECK. No, sir, but the trial court judge has made some statements, and I would like to quote one statement for you. The report that you referred to was substantially discredited because "the IG failed to perform its proper duties to investigate and consider materially significant exculpatory evidence brought to the IG's attention during the investigation." The trial court judge stated "sufficient evidence of the IG's intent or willfulness was adduced to substantiate the allegation. IG pursued its investigation only with an eye toward substantiating the allegations rather than providing a complete account." And that is at page 41 of the Court's opinion that was——

Senator BLUMENTHAL. What is the date of that finding?

Mr. FLECK. March 31, 2022.

Senator BLUMENTHAL. I would just like to enter a letter into the record from the VA OIG to the House VA Committee, dated June 15, 2018, stating, quote, "We have taken a fresh look at the Nepotism Report, the evidence that supports the report, and the purportedly new information that Mr. Fleck submitted to the Deciding Official. Based on this comprehensive review, we have concluded that the Nepotism Report findings and recommendations are fully supported by the law, the testimony of multiple witnesses, and numerous documents."

We will take whatever you would like to submit for the record so that we can have a full account.

[The letter referred to appears on pages 37–42 of the Appendix.]

Senator BLUMENTHAL. Mr. Rendleman, in 2017, you wrote an article for "The Federalist" where you stated, quote, "Abortion is murder and therefore by far the greatest moral failing of our time," end quote. As a judge on the Court of Appeals for Veterans Claims, you may consider appeals regarding a veteran's claim for abortion care. Do you think you can fairly administer the law in considering those appeals on the facts of the cases when they are contrary to your apparently deeply felt personal belief?

Mr. RENDLEMAN. Senator, I absolutely do. The article that you are mentioning actually came from a desire to hear the deeply held beliefs of people who felt differently about me on this issue, and to sort of examine them on their own terms.

I guess I would also say that it is my belief and understanding that the role of the judge that, yes, I am not auditioning to design the VA benefits system as I would prefer it to be or to impose my own policy perspectives, but rather to faithfully and unbiasedly apply the rules as promulgated by the political branches to the facts, without regard to my own personal views.

Senator BLUMENTHAL. My time has expired. Thank you, Mr. Chairman.

Chairman MORAN. Senator Cassidy.

HON. BILL CASSIDY,
U.S. SENATOR FROM LOUISIANA

Senator CASSIDY. I will ask each of you—I am not an attorney so my questions will be more basic. Ms. Lopez, I will ask the same of each of you. There is a backlog in the courts. You do not just

want to wave people through, but you have to give due consideration. How do you deal with that backlog?

Ms. LOPEZ. Senator, thank you for the question. And if confirmed, my plan, as I did as United States Attorney when I took that position, is to go in and make an assessment of exactly what you are describing; take 90 to 100 days to see what is going on, what is causing the backlog, what is causing, I understand remands are also a concern, and try to identify what the issues are, what is causing the delay, what is causing.

But I also want to thank this Committee with the implementation of the AMA and the successes that the process has had, since the implementation of the AMA in 2019. But I know, if confirmed, I will look into that and try to identify how we can further improve that efficiency that has already been identified by the implementation of the AMA.

Senator CASSIDY. Mr. Fleck, I know some people move a docket quickly, some not, so how do you move a docket quickly but fairly?

Mr. FLECK. Thank you. In my current position as a leader of approximately 750 attorneys, we have many ways to work through things and change processes, always looking to improve the process to go through it. I will work collegiately with my colleagues on the Court to see what improvements could be. In addition to that, from my own chambers, I will set procedures and time limits to try to move things along in a deliberate and decisive manner.

Senator CASSIDY. Mr. Jones?

Mr. JONES. Thank you, Senator. The numbers are daunting, right? VA had three million claims last year. The Court had 10,000 appeals in 1 year—six judges, 10,000 appeals. So the numbers are daunting. But the Court needs to remember its statutory mandate. If confirmed, I will remember my statutory mandate, which is to move as quickly as practicable. There is a sense of urgency in the statute, that we need to move on these cases.

With that said, speed is not the same as accuracy. We know that. I am reminded of my time working in an operations cell in Afghanistan, where we are planning operations, and time was always of the essence, and the Deputy Chief of Operations would always tell me, "Jones, we're not going to rush to failure."

And I think the most important thing for the judge is to get it right, to get it right the first time, but realizing you have to move at a deliberate pace. That is what I would do.

Senator CASSIDY. Mr. Rendleman?

Mr. RENDLEMAN. Yes, Senator. The most important thing is to be right on the law. It does not help if we are moving cases quickly but inaccurately, and the veterans are not getting the benefits that they have earned or are entitled to. So, obviously, my first priority is to decide cases correctly.

After that, I think as my fellow nominees have said, the key is to jump in with both feet first, with efficiency and vigor, looking at both what you can do on the chamber's level, leading a team of clerks, and also what you can do working with, if I am fortunate to be confirmed, my fellow colleagues, in terms of procedures and policies of the Court as a whole, anywhere that we can move to make these cases move expeditiously while remaining accurate.

Senator CASSIDY. Mr. Quinn?

Mr. QUINN. Thank you. There is no substitute for hard work. I think you have got to get in there, you have to understand what is going on, and maybe make adjustments going forward.

I certainly agree with the other panelists that accuracy is the most important thing. What you do not want to do is rush to it and then you come to a cycle where you go back and forth between the VBA and the Court of Appeals. So making sure that you come to the right decision the first time. It may take a little more time, but you have got to make sure that it is done correctly.

But I also think there is probably a lot of room for improvements, and I certainly commit before this Committee if I identify those improvements, and they do require some sort of congressional oversight or congressional implementation, to come back and share those thoughts with the Committee, so if they choose to they can make improvements on the process.

Senator CASSIDY. I yield.

Chairman MORAN. Senator Duckworth.

HON. TAMMY DUCKWORTH,
U.S. SENATOR FROM ILLINOIS

Senator DUCKWORTH. Thank you, Mr. Chairman. Mr. Fleck, thank you for being here and also to the other panelists. But Mr. Fleck, in March, the VA Department of Justice entered into an agreement that empowers VA attorneys to initiate or participate in State court guardianship or conservatorship proceedings for veterans. This agreement covers veterans in VA's acute care facilities who no longer require inpatient acute care but who have been deemed by their VA clinician to be incapable of making medical or placement decisions, and have no families or other surrogates to decide for them.

The unprecedented agreement between the VA and DOJ creates a pathway for stripping veterans of their civil rights, including the right to make medical decisions, to decide where to live, and under a full guardianship, to manage their own finances.

This is an inherent conflict of interest. The VA, the agency responsible for caring for veterans, is now also the agency empowered to ask the Court to strip veterans of their legal autonomy.

Mr. Fleck, you have said that as Deputy General Counsel at VA you established this process. Is that correct?

Mr. FLECK. Yes, I led the establishment of it, yes.

Senator DUCKWORTH. Okay.

Mr. FLECK. But not——

Senator DUCKWORTH. When coming up with this plan, were you aware of the risks to veterans under guardianship?

Mr. FLECK. I have handled, in my years of practice, many guardianship cases, Senator, and in all of the cases the courts are very concerned about how the guardianship would be applied, and they also look at the testimony of medical doctors and clinicians. And it always is a public hearing, and the alleged incompetent can also testify, if possible.

Senator DUCKWORTH. Okay. So let's do an example. Were you aware of abuse and exploitation of veterans under guardianships, such as in the case of Steven Stryker? Are you familiar with that case?

Mr. FLECK. No, I am not, ma'am.

Senator DUCKWORTH. Okay. Well, let me tell you what happened to Steven Stryker. Steven Stryker was a Navy veteran whose guardian was appointed at the request of the hospital treating him. To get him into an assisted living facility his guardian had his feeding tube capped, a step that the hospital staff testified had no medical benefit, so she did that against the advice of the hospital staff. She also signed a Do Not Resuscitate order, or a DNR, against his wishes, and refused to withdraw it, even though his family objected and a psychiatrist who examined him, believed he could decide for himself that he wanted to live.

He choked to death in a Tampa hospital in 2019. His guardian said she preferred "quality of life" versus "quantity of life" in making her decision on whether or not he should live or die.

Unfortunately, Mr. Stryker was not an outlier. A judge later removed her from nearly 100 cases, and she was convicted of felony elder neglect.

Mr. Fleck, if confirmed, you will be responsible for reviewing VA's decisions on veterans' benefit claims, but you orchestrated a process that could put hundreds of disabled veterans at risk for losing their rights, being robbed of benefits they earned, or even dying at the hands of a guardian. Why should the American people trust that you will make decisions with the veteran's best interests in mind?

Mr. FLECK. The decision that we put in and the process we put in place was to make the best interests for the veteran.

Senator DUCKWORTH. You do not think it is a conflict of interest for the VA, which is charged with caring for the veteran, would also be the entity that is going to also petition to have the veteran's civil rights removed?

Mr. FLECK. That is only after—and that is different than the case you also stated. In that case you said there were family members. This would be after a thorough search for family members and other relatives or friends that would be willing to step forward to handle, to be a guardian.

Senator DUCKWORTH. And in that case the hospital medical staff said that having his feeding tube capped was not necessary, as well, and the guardian still moved forward with it.

I understand that guardianship is common, but that fact alone is a problem because guardianships should be the very last resort, not something that is common. Congress has provided the VA with authority and resources to ensure veterans are receiving care in the most appropriate setting, so there are medical foster homes, community living centers, caregiver support. The VA has many options to free up hospital beds without sending veterans in need of care off into the realm of State court-appointed guardianship, with no plans to ensure that the veterans are safe. And I still cannot understand why the VA, in the Department's responses to our requests for information, would not commit that VA attorneys would monitor cases and instead confirmed that oversight remains solely with the State court under this agreement.

So basically the Trump administration's decision is to wash its hands of responsibility for veterans' welfare, and I do not think this is some clever efficiency hack. It is a dereliction of duty. And be-

cause of this and other major concerns, I cannot support your confirmation.

Thank you, Mr. Chairman. I yield back.

Chairman MORAN. Senator King.

HON. ANGUS S. KING, JR.,
U.S. SENATOR FROM MAINE

Senator KING. Thank you, Mr. Chairman. Ms. Lopez, I wanted to ask some questions about the Board itself. And what is concerning me is that I understand there is a report from the Board of Veterans' Appeals predicting a 21 percent increase in appeals it expects to receive in this fiscal year. And yet, at the same time, the VA's budget request calls for a $12 million decrease in the Board's funding, despite the increase in workload. It also requests a 10.5 percent decrease in staffing.

I do not understand the logic of a Board that acknowledges that it is overworked, sitting still for significant diminution of its staff and budget? Explain that to me.

Ms. LOPEZ. Thank you for the question, Senator, and it is nice to see you again. We met back in June, and thank you for the time for the meeting.

Senator, again, as I mentioned when we met, I am not at the Board. I understand that those are things that I would need to look at, if confirmed, if I am honored to be confirmed. That would be something that I would look into within my first 90 to 100 days, in an assessment to identify the staffing situation, the budget situation, the financial situation. I have had to address those same types of issues before as a United States Attorney, when I first came in, addressing staffing and budget needs and those kinds of things, and raise those to, in that situation, to the Attorney General and the Executive Office of U.S. Attorneys. And I will do that.

If I find, in my assessment, that there needs to be an address of that in terms of the shortage of staff that you identify and budget considerations, I will raise those with the Attorney General.

Senator KING. I hope you will pursue that actively——

Ms. LOPEZ. I will.

Senator KING [continuing]. Because there was a survey of BVA attorneys, a third of them. I am sorry. Ninety-seven percent said current performance standards increased the likelihood of factual errors, 93 percent said there is not enough time review each case de novo, 92 percent said the standards sacrificed quality legal analysis. So I think you have got your work cut out for you.

Ms. LOPEZ. I welcome the challenge, and I am honored to be asked to serve our veterans. I have been retired for 5 years, but it is an honor of a lifetime to have the opportunity to address concerns and issues that affect our veterans.

Senator KING. Mr.—is it Reedleman?

Mr. RENDLEMAN. Rendleman, Senator.

Senator KING. Your position on abortion is clear. Let me ask a slightly different question. If an appeal comes to you involving a veteran's access to contraception, can you handle that case fairly and objectively, given your rather strong views going back to *Griswold*?

Mr. RENDLEMAN. Yes, absolutely, Senator. I would consider myself bound to unbiasedly, in a fair and objective manner, apply the laws and regulations, and the binding precedent, including *Griswold* that applies to the Court of Veterans Claims.

Senator KING. Even though you believe that to be morally deficient?

Mr. RENDLEMAN. Senator, absolutely. I think if I was motivated to—I would say first, I am not going to take a position on contraception being morally deficient. But I am not attempting to sit in your shoes and set policy for the Department of VA or a position in the executive branch doing the same thing. I am excited about the role of taking the law, not as I would prefer it to be but as it comes to me and applying that to the facts as the cases come to me.

Senator KING. Thank you. Mr. Jones, Assistant General Counsel for Ethics in the White House, January 2025 to the present. Have there been any ethical violations in the White House since you have been in that position?

Mr. JONES. Senator, just a point of clarification. So I was detailed until June of this year, so I am not currently at the White House.

Senator KING. Okay. I was misinformed, but you were there for a year and a half.

Mr. JONES. That is correct, similar to the first Trump administration where I was asked to detail from my agency. Currently it is the CFTC. Back then it was the Army.

Senator KING. Any violations of ethics during the year and a half that you were there?

Mr. JONES. Senator, it is my experience that the individuals at the White House that I worked with, that I have advised on, comply with their ethics rules.

Senator KING. Do you think it is ethical for the President of the United States to trade stocks when he also can make comments about those stocks, as he did with Dell, that would increase the value of his holdings? Is that ethical?

Mr. JONES. Senator, just to provide some context to your question, the role of an Ethics Advisor is to advise on the lawfulness of a course of action. Does it comply with the law?

Senator KING. Did you advise that that was lawful for the President of the United States to trade in stocks which he can then comment on in public and therefore affect the value of the stock? Did you say that that was okay?

Mr. JONES. Senator, as I am sure you know, I cannot get into the content of any legal advice I have given at the White House. It is protected by privilege.

Senator KING. Do you think that is okay, from an ethical point of view? That is my question.

Mr. JONES. Again, giving context to your question, ethics, it is a rules-based compliance system. Does it comply with the rules? Does it comply with statute and regulation? And as I mentioned, during my time at the White House, I believe the employees do follow their ethics rules. That is my experience.

Senator KING. And so you have no opinion on my question, which is not a hypothetical. It is a factual question. I do not understand your answer. Is it ethical for the President of the United States to

make thousands of trades in stocks, many of which involve companies in which he has made public statements, affecting the value of that stock? That is a pretty straightforward question for a guy who claims he was Assistant General Counsel for Ethics. Is that ethical?

Mr. JONES. Senator, there is actually some nuance to that question, right? Again, an ethics——

Senator KING. I would like to hear the nuance, please.

Mr. JONES. Yes, Senator. So an Ethics Counsel advises on the lawfulness of a certain action. It is not my personal opinion on whether or not I think something is appropriate or ethical, morally right or morally wrong. That is not what I am doing. Similar to what I would do on the bench. It is not my personal opinion.

Senator KING. So there is no law or regulation that would impact the President's trading in stocks that he can then affect through his public comments?

Mr. JONES. Senator——

Senator KING. There is nothing that would cover that in any way, shape, or form?

Mr. JONES. Senator, the law that would apply would be 18 USC 208, the Conflict of Interest Statute, which specifically excludes the President and Vice President. So those laws do not apply to the President.

Senator KING. So why do you have an Ethics Office in the White House if the President is excluded from ethics considerations?

Mr. JONES. That is one statute.

Senator KING. It seems to me that is like being a Maytag repairman.

Mr. JONES. Senator, that is one statute. There are plenty of statutes that do apply to the President and Vice President, and there are a host of other employees there at the White House and the National Security Council, that I have interacted with.

Senator KING. Thank you. Thank you, Mr. Chairman.

Chairman MORAN. Thank you, Senator King. I am going to ask, I think, one more question, and then I will see if Senator Blumenthal has a second question or a second round of questions.

I just want to get to this problem of increasing cases, and maybe it is not a problem, although the backlog and timeframe in which decisions are made is clearly important to a veteran or his or her beneficiaries. But what I am told is that over the last several years the Court's caseload has remained substantial. While incoming appeals average 2,600 per year during the Court's first 15 years—and I am talking about the U.S. Court of Appeals for Veterans Claims. So in the first 15 years of the Court's existence it received 7,000 appeals per year. In fiscal year 2025, the Court received 10,449 appeals, which was the highest number of appeals in the Court's history, and represented a 17 percent increase over the prior year.

I think I left out the first sentence. At least I did not say it the second time I talked about this. Incoming appeals averaged 2,600 per year during the Court's first 15 years. Now it is routinely 7,000 appeals per year. And in fiscal year 2025, just a year or two ago, we had a 17 percent increase from that.

It also, I suppose, is important to know how many court cases were disposed. But my question really is about what is the cause?

Why is the U.S. Court of Appeals for Veterans Claims receiving so many more cases to be adjudicated? And is there something in the system that is causing this, or is this just the increasing volume of veterans we have in today's America that are eligible to have a case?

Ms. Lopez, what is the systemic problem or reason—I do not need to be pejorative—what is the reason cases keep increasing?

Ms. LOPEZ. Senator, thank you for that question, and I completely empathize with what you are saying in terms of the number of claims and appeals. Again, I am not at the Board, so I am not able to identify specifically what the reason is. But it is something that I will prioritize if I am confirmed, and I am able to step in as Chair and take a look at this. It is important. I understand that, as I mentioned earlier, that there have been significant improvements under the AMA. But what is causing them and what the root cause is, or what kind of trends there are that are causing this, I will definitely look into and I will be happy to come back and share that information with this Committee.

Chairman MORAN. Any of you other nominees have an idea of anything that is going on or not going on that you will be engaged in, that would reflect the reason for the increase or those increases?

Mr. FLECK. Senator, I think there are several reasons and probably too many to get through today. But one of the things, as a Board judge, we can look at the process to improve, to cut the backlog of cases to be decided. Any other improvements would be out of our realm of doing things to do it.

But I think the recent enactment of the AMA, the PACT Act, has increased the number of claims coming into the Veterans Benefit Administration, and pro rata, that probably increases the number of denials that go to the Board of Veterans' Appeals, and then you get a certain percentage of those that go forward. So as the numbers go up you still get pretty close to the same percentage of appeals.

Chairman MORAN. So the number of cases may as a percentage of the number of opportunities for appeal may not change. We just have more opportunities. I think that is what you said.

Mr. FLECK. I think that is a big part of it, but I cannot speculate too much without certain other facts.

Chairman MORAN. And certainly the PACT Act was expected to have a consequence in this regard.

Mr. FLECK. Yes, and additional funding was provided to handle those claims, and those claims are coming, as expected.

Chairman MORAN. Senator Blumenthal.

Senator BLUMENTHAL. A couple of questions. Ms. Lopez, as you may know the Board of Veterans' Appeals, until recently, has maintained a liaison with the accredited veterans advocate, the veterans service organizations, and the Chairman of the Board has had regular engagements with them. If confirmed, will you commit to reinstating the VSO liaison position and to hosting quarterly engagements with VSOs?

Ms. LOPEZ. Senator, thank you for that question. And if confirmed, I will definitely look into that. I will just let you know that pending this hearing, I have spent a lot of time in Florida with our

local VSO organizations and with congressional personnel that handle veterans' issue. This is very important to me personally, I am a veteran, and I commit to definitely looking into that and consulting with this Committee on that issue.

Senator BLUMENTHAL. I am glad to hear that because the veterans service organizations are important and have insights and data that is important to decision-making by the Board of Veterans' Appeals and all aspects of the VA.

Ms. LOPEZ. They gave me a lot of information in preparation for this position, so I look forward to that continued relationship with them.

Senator BLUMENTHAL. Senator Cassidy and I have a bill to address issues with evidence submissions, docket efficiency, and the Board's workflow management system, which address the backlogs that concern all of us. If confirmed, do you commit to working with the Committee on this legislation and others to address these issues?

Ms. LOPEZ. I look forward to the collaboration with this Committee. I appreciate your oversight and your partnership in that, and I look forward to it.

Senator BLUMENTHAL. Thank you. You were a U.S. Attorney in the Middle District of Florida?

Ms. LOPEZ. Yes, sir.

Senator BLUMENTHAL. For 3 years?

Ms. LOPEZ. For 3 years. Yes, sir.

Senator BLUMENTHAL. Thank you. Thank you, Mr. Chairman.

Chairman MORAN. Senator King?

Senator KING. Mr. Chairman, I would just add, you noted in your comments the increase in the workload. For next year, the projection is it will go up another 21 percent. At the same time, the budget decreases for this Agency $12 million and a 10.5 percent decrease in staffing. So there is a mismatch there that I hope we can address.

Chairman MORAN. In regard to the budget request, it is Congress that will determine the amount of money that will be made available to the Courts, and we need to do our jobs well to make sure that we are adequately funding. The President is making a recommendation. We need to do our jobs well.

Senator KING. Amen, Mr. Chairman. Thank you.

Chairman MORAN. Is there anything any of you would like to add or detract from what you said in your testimony? Anything that you want to make sure we hear before I conclude the hearing?

[No response.]

Chairman MORAN. You are supposed to give me time to find the words that allow me to conclude the hearing [laughs]. Oh, there they are.

Chairman MORAN. If there are no other questions, and there were not, I want to thank our Committee members, the nominees, and our audience for being here today. Any Member who would like to send questions for the record to one of the nominees should do so as soon as possible. That means Members of this Committee have the opportunity to inquire of you in writing. And we would expect and appreciate a timely response if that occurs, from each of the nominees.

And with that this hearing is adjourned.

[Whereupon, at 5:05 p.m., the hearing was adjourned.]

A P P E N D I X

Submissions for the Record

JOHN KENNEDY
LOUISIANA

SUITE SR-437
RUSSELL BUILDING
WASHINGTON, DC 20510
(202) 224-4623

United States Senate

COMMITTEES
APPROPRIATIONS
BANKING, HOUSING, AND URBAN AFFAIRS
BUDGET
JUDICIARY

September 21, 2026

The Honorable Jerry Moran
Chairman
Committee on Veterans Affairs
United States Senate

The Honorable Richard Blumenthal Ranking Member
Committee on Veterans Affairs
United States Senate

Re: Nomination of James Quinn to the United States Court of Appeals for Veterans Claims

Dear Chairman Moran and Ranking Member Blumenthal:

I write to support President Trump's nomination of James Quinn to a seat on the United States Court of Appeals for Veterans Claims.

As sons of Louisiana, James and I have known each other for 20 years. James has been committed to our State from the start. He received his education at Tulane University and Loyola University New Orleans College of Law. James taught a course in constitutional law at LSU before working in Congress.

My staff and I have worked with James over the past 10 years through my collaboration with Senator Cassidy. In that time, I have observed James to be studious, dedicated to public service, and passionate for helping the people of Louisiana whom Senator Cassidy and I have the privilege to represent in the Senate. That includes our state's large veteran community.

I know James to be a man of integrity, honest and fair in his many dealings with my office. That's important. If confirmed, our nation's veterans will depend on James and the other members of this Court to settle their disputes even-handedly and with respect for their service and contribution to our freedoms here at home. I am confident that he will.

Sincerely,

John Kennedy
United States Senator, Louisiana

Opening Statement of Ranking Member Richard Blumenthal
Hearing to Consider Pending Nominations
September 23, 2026

Today, we are here to consider five nominees.
I thank each of you for your willingness to serve and welcome your families.
But I will be very blunt - I am gravely concerned that none of these nominees have any experience with veterans' benefits law whatsoever – not as judges, not as lawyers, not even as accredited veterans' advocates.

Ms. Lopez, if confirmed, you would be responsible for ensuring the Board of Veteran's Appeals makes accurate, timely decisions on veterans' appeals.
Thanks to investments by Congress, the Board was able to hire substantially more judges, attorneys, and staff.
But this Administration has cut the Board's budget, instituted a hiring freeze, and pushed out many of its employees and senior leaders.
Coupled with VA efforts to reduce the claims backlog, Board employees are being asked to tackle a growing backlog of appealed claims – with less support and deteriorating trust in its leadership.
I'm interested to hear how you will work with Congress and stakeholders to ensure veterans receive timely and accurate decisions on their claims.

Turning to the Court of Appeals for Veterans' Claims (CAVC) nominees - CAVC judges have an ethical duty when holding positions of public trust.
Mr. Fleck, you were found by VA's Office of Inspector General to have engaged in nepotism when - as a manager in the Office of General Counsel – you advocated for the employment of your wife in that same office.
The OIG also found you shared sensitive information with your wife while she was being vetted for this position, and you subsequently lied about it.
You claimed to have additional exculpatory evidence, but the OIG reviewed that evidence and did not change their conclusions.
You will have to explain to the Committee why this report is not disqualifying.

I should also note that VA intentionally redacted and withheld documentation requested by my staff related to the investigation into Mr. Fleck, while providing the Chairman's staff with additional, unredacted documents.
While I appreciate the Chairman's staff subsequently sharing this documentation and thank them for their transparency and bipartisanship – we should all have very strong concerns about VA trying to hide, cover-up or prevent information from being provided to one side of this Committee.
It is unacceptable, and I intend to make further inquiries into this improper conduct.
We have a Constitutional duty of oversight that we take seriously on this committee – and that should always be a bipartisan duty.

Mr. Rendleman, if confirmed, you would have the power to decide whether a veteran's claim for reproductive health care coverage or reimbursement is denied.
The radical anti-abortion views you have espoused call into question your ability to make impartial judgments on abortion-related claims.
Mr. Chairman, I'd like to enter into the record a letter from 30 organizations, including National Women's Law Center, Minority Veterans of America, National Organization for Women, Common Defense, Physicians for Reproductive Health, and others concerned about Mr. Rendleman's nomination.

In addition, Mr. Chairman, I am disturbed we are considering Mr. Quinn for a position on CAVC that will not be open until next Congress. This is unprecedented in this committee.
In November, the American people will determine at the ballot which party should lead the Senate - and provide advice and consent on nominees.
This committee should not be co-opting that choice, and this will set another dangerous partisan precedent moving forward.
I look forward to the conversation today – and to determining whether these individuals should be confirmed for positions critical to veterans receiving their earned benefits and healthcare.

Mr. Chairman, before we get started, I'd like to address another urgent and critical topic.
VA recently raised the ceiling for its Electronic Health Record (EHR) contract with Oracle by $17 billion - with no notice to Congress or taxpayers.
That is more than the $13 billion cost estimate for the Major Richard Star Act, which some of my colleagues claim we cannot afford without cutting benefits for disabled veterans.
Congress cannot stand idle while the Trump administration gifts billions of dollars to Oracle through no-bid contracts, with very little to show for it.
Today, the system is live in just 17 of VA's 170 medical centers.
Deployments have restarted at additional sites, and VA staff are raising the same alarms we've heard before - system defects, clinician burnout, falling productivity, and patient safety risks.
Therefore, I'd like to formally request the Chairman hold a hearing on implementation of the EHRM, and I have a letter for the record, signed by all Democratic members of the Committee.
I thank the Chairman in advance for his consideration.

September 18, 2026

United States Senate Committee on Veterans' Affairs
412 Russell Senate Office Building,
Washington, DC, 20510

Dear Chair Moran, Ranking Member Blumenthal, and Committee Members:

We write to express our concern regarding the nomination of Daniel F. Rendleman for the United States Court of Appeals for Veterans Claims. When a claim for health care coverage or reimbursement is denied by VA, veterans can appeal the decision to the Board of Veterans' Appeals, and, subsequently, to the Court of Appeals for Veterans Claims. As a judge on this court, Rendleman could decide whether a veteran's claim for reproductive health care coverage or reimbursement is denied, and his alarming anti-abortion record seriously calls into question his ability to remain impartial on the issue. Veterans already face significant barriers to health care and the actions of this administration have put reproductive health care, in particular, even further out of reach. Given Rendleman's extreme opposition to essential health care like abortion, confirming him to the Court of Appeals for Veterans Claims could further put the health and well-being of veterans and their loved ones at risk.

Rendleman made his opposition to abortion abundantly clear in 2017 when he wrote an article for *The Federalist*, a conservative online magazine.[1] In it, he stated, "I believe that a fetus is a human being with all the rights that I possess…." He went on to declare, "abortion is murder and, therefore, by far the greatest moral failing of our times." Although he acknowledged that it "is not the only moral failing", he insisted that "700,000 murders every year, performed by doctors at the behest of parents, overwhelms any other moral or political consideration on the ballot each November."

The article is an attempt to portray Rendleman as open-minded or measured, but he is clear that his ultimate goal is to provide a roadmap for the anti-abortion agenda. For example, he writes in hopes that the "pro-life movement finds itself poised to make significant gains" in that the newly-appointed Supreme Court Justice, Neil Gorsuch, is "one of us." Rendleman is explicit about his political calculus in service of the anti-abortion movement: "But if they [pro-abortion advocates] can find opportunities in this turbulent and polarized political climate, so can we."

Rendleman's stance on abortion is especially concerning given recent actions by the Trump administration. In December 2025, the Trump administration's VA implemented a near-total abortion ban for veterans and their families, marking the strictest abortion policy among federal agencies. This draconian policy prohibits abortion counseling for veterans and their beneficiaries in all circumstances, and denies abortion care except where a VA clinician certifies that the life

[1] Daniel Rendleman, *5 Things The Right Can Learn From Abortion Supporters At Yale Law*, The Federalist (May 25, 2017), https://thefederalist.com/2017/05/25/5-things-right-can-learn-abortion-supporters-yale-law/.

of the pregnant person is endangered.[2] The policy bans abortion even in health-threatening situations or cases of rape and incest. This policy is not only morally reprehensible, but it also overlooks that abortion is a fundamental component to the full spectrum of comprehensive pregnancy-related care. Abortion bans like the one at VA not only deny people the abortion care that they need, but they also can and do interfere with miscarriage care[3]—increasing medical risks such as infections that could jeopardize life, health, and fertility—which is often treated and coded identically to abortion care.

Amidst the fear and confusion created by this new abortion ban, veterans and their loved ones are now, more than ever, in need of an impartial judge on the Court of Appeals for Veterans Claims. If confirmed, Rendleman's strong ideological beliefs call into question his ability to remain impartial when considering appeals related to reproductive health care coverage, including miscarriage management or the extremely limited abortion care currently available at VA. Veterans deserve a fair chance when seeking the health care coverage they are entitled to.

Given the significant reproductive health care barriers all people, including veterans, are facing today, we are deeply concerned that Rendleman's anti-abortion views would compromise his ability to respect the rights and health of those who would come before him. Veterans deserve fair consideration of their claims by an unbiased authority, not an ideologue. We are deeply concerned that confirming Rendleman would put the health and lives of our nation's veterans at risk.

Signed,

Abortion Forward
ACCESS REPRODUCTIVE JUSTICE
Alliance for Girls
American Atheists
Arkansas Black Gay Men's Forum
Autistic Women & Nonbinary Network
Clearinghouse on Women's Issues
Common Defense
Feminist Majority Foundation
Guttmacher Institute
Legal Momentum, The Women's Legal Defense and Education Fund

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[2] This new policy rescinds a critical rule established in September 2022, which allowed veterans and eligible family members to access abortion care in cases of rape, incest, or when the life or health of the pregnant person was at risk. Previously, the VA had imposed a blanket ban on abortion care without exceptions. *See* Reproductive Health Services, 90 Fed. Reg. 61310 (2025), https://www.govinfo.gov/app/details/FR-2025-12-31/2025-24061/summary; *see also* NWLC, PROTECT VETERANS' ACCESS TO ABORTION CARE, https://nwlc.org/protect-veterans-access-to-abortion-care/?ms=MRDAFVTAUDA_c3-AW_PRO_&utm_campaign=&utm_source=viant&utm_medium=audio.

[3] Shefali Luthra, *Abortion bans are restricting miscarriage care, new study finds*, The 19th (May 18, 2026), https://19thnews.org/2026/05/abortion-bans-miscarriage-care-research/; *see also* Maria Rodriguez, et al., Management of Spontaneous Abortion Among Commercially Insured Individuals in the United States After Dobbs v Jackson, JAMA. 2026;336(1):48–55, https://jamanetwork.com/journals/jama/article-abstract/2849131?resultClick=1

Minority Veterans of America
National Abortion Federation
National Council of Jewish Women
National Health Law Program
National LGBTQ Task Force Action Fund
National Network of Abortion Funds
National Organization for Women
National Partnership for Women & Families
National Security Leaders for America Veterans Working Group
National Women's Law Center Action Fund
National Women's Political Caucus
NSL4A
Out in National Security
Physicians for Reproductive Health
Planned Parenthood Federation of America
Power to Decide
Pregnancy Justice
Reproductive Freedom for All
UltraViolet Action

JERRY MORAN, KANSAS
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DAN SULLIVAN, ALASKA
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KEVIN CRAMER, NORTH DAKOTA
TOMMY TUBERVILLE, ALABAMA
JIM BANKS, INDIANA
TIM SHEEHY, MONTANA
DAVID SHEARMAN, STAFF DIRECTOR

United States Senate
COMMITTEE ON VETERANS' AFFAIRS
WASHINGTON, DC 20510

RICHARD BLUMENTHAL, CONNECTICUT
RANKING MEMBER
PATTY MURRAY, WASHINGTON
BERNARD SANDERS, VERMONT
MAZIE K. HIRONO, HAWAII
MAGGIE HASSAN, NEW HAMPSHIRE
ANGUS S. KING, JR., MAINE
TAMMY DUCKWORTH, ILLINOIS
RUBEN GALLEGO, ARIZONA
ELISSA SLOTKIN, MICHIGAN
TONY McCLAIN, STAFF DIRECTOR

September 23, 2026

Dear Chairman Moran:

We write to respectfully request that the Senate Committee on Veterans' Affairs convene a full committee hearing on the Department of Veterans Affairs' Electronic Health Record Modernization (EHRM) program.

Since its inception, EHRM has been marked by significant cost overruns, repeated schedule delays, and patient safety concerns at deployment sites. Independent reviews from the VA Office of Inspector General (VA OIG) and the Government Accountability Office (GAO) have documented system outages, medication-ordering errors, and unresolved data migration issues that have directly affected veteran care. In testimony before the House Veterans' Affairs Committee earlier this month, GAO stated that the revised lifecycle cost estimate and accelerated deployment schedule VA provided to the Committee and GAO last year are incomplete and insufficient for proper oversight. In addition, VA recently raised the EHRM contract ceiling with Oracle by $17 billion without notifying Congress or submitting a revised justification and authorization as required by law.

Further, the recent restart of deployments at sites in Michigan, Ohio, and Indiana illustrates why this oversight is timely. After pausing new rollouts in April 2023 due to concerns raised by veterans, clinicians, and Congress, VA resumed deployments on April 11, 2026, bringing the system online at the Ann Arbor, Battle Creek, Detroit, and Saginaw VA facilities—the first wave of 13 sites scheduled for 2026 under the Department's accelerated timeline. Prior to that go-live, several of my colleagues wrote to VA Secretary Collins raising concerns about unresolved system defects ahead of the Michigan rollout. The Committee should examine whether the issues identified before deployment have in fact been resolved, what clinical and patient-safety data has been collected at the sites in the months since go-live, and what lessons are being applied as VA moves toward its goal of roughly 170 site deployments by 2031.

Given the scale of federal investment in this program and, more importantly, the risks it poses to the health and safety of the veterans who rely on VA care, I believe the Committee has a responsibility to conduct rigorous oversight at this juncture. Veterans and the taxpayers who fund this program deserve a clear, public accounting of where EHRM stands today and what concrete steps the Department is taking to correct course. A full committee hearing would ensure the transparency and level of scrutiny this program warrants.

We appreciate your attention to this request. Thank you, Chairman Moran, for your continued leadership on behalf of our nation's veterans.

Sincerely,

RICHARD BLUMENTHAL
United States Senator

PATTY MURRAY
United States Senator

BERNARD SANDERS
United States Senator

MAZIE K. HIRONO
United States Senator

MARGARET WOOD HASSAN
United States Senator

ANGUS S. KING, JR.
United States Senator

TAMMY DUCKWORTH
United States Senator

RUBEN GALLEGO
United States Senator

ELISSA SLOTKIN
United States Senator

DEPARTMENT OF VETERANS AFFAIRS
INSPECTOR GENERAL
WASHINGTON DC 20420

JUN 15 2018

The Honorable Jack Bergman
Chairman
Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We have reviewed your recent correspondence with Department of Veterans Affairs Deputy Secretary Thomas Bowman regarding the Office of Inspector General (OIG) Report, *Administrative Investigation of Conflict of Interest, Nepotism, and False Statements within the VA Office of General Counsel, Washington, DC* (Nepotism Report). That correspondence addresses the outcome of a disciplinary proceeding against Mr. Robert Fleck, a senior lawyer at the Department, arising out of our Nepotism Report. We appreciate the opportunity to respond to the Subcommittee, and our position is straightforward: We respectfully disagree with Deputy Secretary Bowman's comments on the Nepotism Report and we stand by the Nepotism Report, its findings, and its recommendations.

The Nepotism Report was the result of an OIG investigation into allegations that Mr. Fleck had engaged in a prohibited personnel practice by advocating for the Department's hiring of his wife. The findings and recommendations in the Nepotism Report resulted in a Department disciplinary process that found Mr. Fleck did not violate the anti-nepotism rules and lightly sanctioned him for improperly sharing internal Department documents with his wife. In his May 4, 2018 letter to you, the Deputy Secretary defended the result of the disciplinary proceeding, claiming there were "major inconsistencies" between the OIG's findings and the evidence, and pointing to "materials submitted by Mr. Fleck" in the disciplinary proceeding. We requested that the Department make such evidence available to us so that we could review our findings and respond to the Subcommittee.

We have taken a fresh look at the Nepotism Report, the evidence that supports the report, and the purportedly new information that Mr. Fleck submitted to the Deciding Official. Based on this comprehensive review, we have concluded that the Nepotism Report findings and recommendations are fully supported by the law, the testimony of multiple witnesses, and numerous documents. Moreover, the specific materials cited in the Department's letter are either irrelevant or are contradicted by the weight of the evidence. Subcommittee staff also requested that we provide information

concerning our referrals to the U.S. Attorney's Office concerning Mr. Fleck's conduct. That information is also provided below.

The Evidence Fully Supports the OIG's Findings in the Nepotism Report

The pertinent legal standards are addressed in the Nepotism Report. In sum, as the VA's own General Counsel's office has explained, "the anti-nepotism statutes and regulations prohibit a public official from appointing, employing, promoting or advancing a relative, or advocating such an action in favor of the relative." VA Office of General Counsel Advisory, VAOPGCADV1-2002. Moreover, in this context, "'Advocating' includes making a recommendation for one of the listed actions in favor of the relative, or referring the relative for consideration to a subordinate public official (with or without a recommendation)." *Id.* Finally, laws and regulations applicable to the employment of relatives, "generally require each spouse to recuse him- or herself from participation in a matter that may influence or affect the other spouse's employment status or particular financial interests." *Id.*

The findings of the Nepotism Report are based on an analysis of pertinent emails and numerous interviews. By way of example, the finding that Mr. Fleck recommended his wife for an e-Discovery Coordinator position was based on the interviews of Mr. Richard Hipolit, Deputy General Counsel for Legal Policy; Mr. Cameron Gore, Chief Counsel of the Real Property Group; and Mr. Michael Hughes, Chief Counsel of the District Contracting National Practice Group. Moreover, the finding was supported by emails from Mr. Hipolit, Mr. Gore, and Mr. Fleck himself. This evidence and the inferences to be drawn from the evidence are extensively discussed in the Nepotism Report.

Department's Support for Its Disciplinary Process

The Department's letter cites two principal issues to support the Department's disciplinary process and to question the OIG's findings. First, the Department alleges that the Proposing Official "recognized major inconsistencies between the findings and conclusions in the OIG report and the actual evidence compiled," which caused the Proposing and Deciding Officials to determine that "many OIG findings were not supported by the evidence."[1] Second, the Department claims that the Deciding Official determined that the evidence did not support the OIG's findings "after reviewing the evidence file and materials submitted by Mr. Fleck in response to the Proposing Official's action." In support of these general statements, the Deputy Secretary raised only two specific concerns: that the Deciding Official determined the OIG did not cite "a transcript containing exculpatory testimony" and that the OIG failed to interview "a relevant person, known to OIG investigators, willing to provide additional exculpatory

[1] Because the new materials were submitted by Mr. Fleck only after the Proposing Official made her recommendation to impose significant discipline, the OIG is not aware of the basis for Deputy Secretary Bowman's characterization of the Proposing Official's view of the evidence.

information." On close examination, neither of these issues impact or diminish the Nepotism Report, its findings, or its recommendations.

Proposing and Deciding Officials' Evaluation of Evidence

Neither the Proposing Official's letter recommending discipline nor the Deciding Official's letter communicating his decision identified any inconsistencies between the evidence and the findings and conclusions in the OIG report. In fact, just the opposite is true. The Proposing Official's letter recites many of the facts and much of the evidence provided in the Nepotism Report to support the proposed discipline of demotion on the basis of "conduct unbecoming."

In contrast to the Proposing Official, the Deciding Official did not provide any analysis or explanation to justify the conclusion that the OIG's evidence did not support a finding of nepotism. The decision letter merely states that the Deciding Official did not find substantial evidence to support a charge of conduct unbecoming. This statement provides no identification of contradictory facts and is inconsistent with the evidence fully recounted in the Nepotism Report and in the letter of the Proposing Official. Indeed, the failure of the Deciding Official to provide any analysis or support for his decision creates a reasonable inference that there is no basis for the conclusion.

Evaluation of Evidence Submitted by Mr. Fleck

Similarly, the evidence provided to the Deciding Official by Mr. Fleck does not call into question the Nepotism Report. The evidence Mr. Fleck provided in support of his submission to the Deciding Official consisted of ten documents. Four of those documents are transcripts of testimony taken by the OIG during the course of our investigation. Another four are documents that were related to developing the concept of a contract litigation team and had no relation to the e-Discovery Coordinator position or Mr. Fleck's wife, Ms. Kristina Wiercinski. In reality, the only new evidence related to Ms. Wiercinski's hiring provided by Mr. Fleck are two declarations from then Office of General Counsel (OGC) attorneys Benjamin Diliberto and Vincent Buonocore. These declarations are the support for the two specific issues raised by the Department. In his declaration, Mr. Diliberto discusses issues related to his OIG testimony, the transcript of which is not cited in the Nepotism Report. In Mr. Buonocore's declaration he notes that he was not interviewed by the OIG during the investigation and includes his recollection of a conference call regarding the e-Discovery Coordinator position.

We turn first to the issue of Mr. Diliberto's transcript. Mr. Diliberto was a member of an OGC panel that reviewed resumes of candidates for the e-Discovery Coordinator position. The Diliberto transcript was not cited in the Nepotism Report for two basic

reasons: it is not relevant to the findings regarding Mr. Fleck and the testimony in the transcript is not exculpatory. Indeed, the reasons Mr. Diliberto's testimony is irrelevant and not exculpatory are clearly apparent in the declaration from Mr. Diliberto provided by Mr. Fleck. In this declaration, Mr. Diliberto states that he was unaware that the candidate he recommended as the most qualified was married to Mr. Fleck. This statement does not provide a basis for any legitimate inference that would exculpate Mr. Fleck. The statement might be relevant to the question of whether Mr. Fleck's wife was the most qualified applicant for the position, but that is not pertinent to the Nepotism Report.[2] To assess nepotism, the relevant question is whether Mr. Fleck used his government position to advocate for his wife's hiring and to favor her in the hiring process. The only inference to be drawn from the statement of Mr. Diliberto is that Mr. Fleck may not have directly advocated for his wife to Mr. Diliberto. The fact that Mr. Fleck may not have advocated to one person (Mr. Diliberto) does not impact or diminish the evidence that he did advocate for his wife to others, as is established by the substantial evidence cited in the Nepotism Report.

The second issue raised by the Department is that the OIG failed to interview Mr. Buonocore, who could have provided additional exculpatory evidence. At the time of our investigation, Mr. Buonocore was no longer a VA employee and thus no longer subject to the OIG's compulsory testimony authority. OIG investigators could have, but did not, request that Mr. Buonocore provide testimony voluntarily. That decision was based on the OIG's conclusion that his testimony would be cumulative and would not change the OIG's findings. Based on testimony from others, we understood that Mr. Buonocore could testify about who at a June 2016 meeting proposed that Ms. Wiercinski would be a good candidate for the e-Discovery Coordinator position. As demonstrated in our report, the OIG reasonably concluded that the original source of that idea was not relevant. The relevant question, as noted above, is whether Mr. Fleck advocated for his wife's hiring and favored her in the hiring process. Again, the evidence that he did, as described in our report, is substantial.

Having reviewed Mr. Buonocore's declaration submitted to the Department, our view is unchanged. In particular, even if Mr. Buonocore had testified during the investigation that he raised the issue of hiring Ms. Wiercinski during a meeting, such testimony would not be exculpatory. Mr. Fleck's own statements during the same meeting were recalled by three other senior attorneys who all testified that Mr. Fleck discussed his wife's experience and her being a candidate for the position. The statutory prohibition on nepotism, 5 U.S.C. § 3110, does not limit the prohibition on advocating for one's family member to being the first person to advocate. It prohibits all advocacy. Thus, the fact that another person, not related to Ms. Wiercinski, raised her qualifications and recommended her for the position is neither exculpatory, nor relevant. Nevertheless, in

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[2] Mr. Fleck discussed his wife's experience and the fact that she would be a candidate for the e-Discovery Coordinator position *before* the position was created or announced. Thus, Mr. Fleck's involvement necessarily preceded Mr. Diliberto's review of Ms. Wiercinski's resume.

reaching our conclusions, the OIG considered the testimony of Mr. Diliberto and Mr. Fleck's statement that Mr. Buonocore initially proposed Ms. Wiercinski as a candidate.

Improper Disclosure of Sensitive Information

The OIG's role is to investigate and to report. We are not in a position to determine the appropriate discipline the Department should impose against Department employees based on our investigative findings. Nevertheless, despite acknowledging that the information Mr. Fleck improperly disclosed was "sensitive," the Deputy Secretary dismisses Mr. Fleck's action as a mere "technical violation."[3] No matter how characterized, the fact is that Mr. Fleck provided the sensitive information to his wife before a hiring decision was made. Mr. Fleck stated that when he sent her the material he told her she needed to "get up to speed" on the e-discovery issues of the Department. Interview of Robert Fleck at 100:4-6 (Sept. 22, 2017). Mr. Fleck claimed he gave the materials to her only after she was hired, but the investigation proved that was not the case. The timing of the release of this information, while Ms. Wiercinski was still under consideration for the position, suggests Mr. Fleck provided it for the purpose of helping her to prepare for an interview for the e-Discovery Coordinator position.

Presentment to the USAO

OIG investigators presented the nepotism allegations regarding Mr. Fleck to the U.S. Attorney's Office for the District of Columbia (USAO) in August 2017. On September 7, 2017, the USAO declined to prosecute the matter for several reasons, including that Mr. Fleck was open about recommending his wife (no concealment) and because VA had administrative remedies available to it. As a result of the declination, OIG investigators scheduled interviews with both Mr. Fleck and Ms. Wiercinski. In late September 2017, after Mr. Fleck and Ms. Wiercinski were provided with *Kalkines* warnings,[4] they were interviewed.

During their respective interviews both stated that Mr. Fleck provided Ms. Wiercinski with sensitive VA information. Both Mr. Fleck and Ms. Wiercinski claimed that the information was passed only after Ms. Wiercinski was offered the position with OGC by the hiring official. The information was provided by Mr. Fleck to Ms. Wiercinski on

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[3] Former Secretary David Shulkin terminated Brian Hawkins, then-director of the DC VAMC, at least in part for a similar violation in September 2017. *See* "VA fires DC medical director for the second time," *Stars & Stripes* (Sept. 20, 2017), *available at https://www.stripes.com/news/va-fires-dc-medical-director-for-the-second-time-1.488619*.

[4] *See Kalkines v. United States*, 200 Ct. Cl. 570 (1973) (requiring that federal government employees submit to investigative interviews after a prosecutor has declined to file criminal charges against the employee for the conduct under investigation).

September 30, 2016. The hiring official was re-interviewed and he stated that he offered Ms. Wiercinski the position on October 4, 2016, and a review of phone records verified that there were no calls between the hiring official and Ms. Wiercinski until October 4, 2016. Based on these statements, the finding that Mr. Fleck and Ms. Wiercinski made false statements under oath was presented to the USAO in early October 2017. The USAO declined to prosecute, again concluding adequate administrative remedies were available.

Conclusion

The OIG conducted a thorough, objective, and careful investigation of the allegations we received concerning potential nepotism by Mr. Fleck. After reviewing the information cited by the Department in the letter to the Subcommittee, we continue to support our original determinations. We accept that it is the Department's responsibility to review our findings and undertake disciplinary action as appropriate. We do, however, take issue with any attempt to divert Congressional attention away from the disciplinary action the Department ultimately did choose to impose by alleging that the OIG had failed to consider relevant evidence. As discussed above, that simply is not the case.

We appreciate the Subcommittee bringing to our attention the contentions of the Department in this matter and affording us the opportunity to respond. We will deliver the documents requested on Monday, June 18th. If the Subcommittee has any further questions regarding this matter, please do not hesitate to contact us.

Sincerely,

Michael J. Missal

Copy to: The Honorable Thomas Bowman
Deputy Secretary

The Honorable Ann McLane Kuster
Ranking Member

596 F.Supp.3d 24
United States District Court, District of Columbia.

Robert M. FLECK, Plaintiff,
v.
DEPARTMENT OF VETERANS AFFAIRS OFFICE OF the INSPECTOR GENERAL, Defendant.

Civil Action No. 18-1452 (RDM)
|
Signed 03/31/2022

Synopsis

Background: Employee of Department of Veterans Affairs (VA), Office of General Counsel (OGC), brought action against VA Office of the Inspector General (OIG) under Privacy Act based on OIG's dissemination and publication of investigation report regarding employee's alleged involvement in his wife's selection for position at OGC, which employee contended contained inaccurate or incomplete information about him. The United States District Court for the District of Columbia, Randolph D. Moss, J., 2020 WL 42842, denied OIG's motion to dismiss. OIG moved for summary judgment. Employee moved to strike purported expert declaration and for sanctions based on nondisclosure of purported expert.

Holdings: The District Court, Randolph D. Moss, J., held that:

declaration regarding nature and centrality of OIG's investigative function was permissible fact testimony;

Privacy Act authorized VA to exempt records system kept by OIG's Office of Investigations;

exemption from Privacy Act's accuracy requirement for records disclosed under FOIA only applied to records actually disclosed in response to FOIA request;

Privacy Act did not require OIG to update report following dissemination;

OIG made reasonable efforts to ensure accuracy of report's conclusion that employee and wife made false statements;

employee's rejections from job positions and promotion were not caused by any inaccuracies or omissions in report; and

triable issues existed as to whether any inaccuracies or omissions in report caused employee to incur legal fees to defend against proposed demotion.

Motion for summary judgment granted in part and denied in part; motion to strike and for sanctions denied.

Procedural Posture(s): Motion for Summary Judgment; Motion to Strike Expert Testimony; Motion for Sanctions (Discovery).

Attorneys and Law Firms

***30** Sara E. Kropf, Kropf Moseley PLLC, Washington, DC, for Plaintiff.

Jeremy S. Simon, DOJ-USAO, Washington, DC, for Defendant.

MEMORANDUM OPINION AND ORDER

RANDOLPH D. MOSS, United States District Judge

This Privacy Act case concerns the dissemination and publication of a report based on an investigation that Defendant, the Office of the Inspector General of the Department of Veterans Affairs ("VA OIG" or "OIG"), conducted into Plaintiff Robert Fleck's alleged involvement in his wife's selection for a position at the VA's Office of General Counsel, where Fleck also worked. Fleck alleges that Defendant violated two provisions of the Privacy Act —5 U.S.C. § 552a(e)(5) and (e)(6)—by maintaining and publishing inaccurate or incomplete information about him, which, in turn, prevented him from obtaining a higher paying job, caused him to incur legal fees to defend against the VA OIG's findings, and resulted in adverse effects on his health. After the Court denied Defendant's motion to dismiss on January 3, 2020, Dkt. 21, Fleck filed a second amended complaint, Dkt. 31, and the parties engaged in discovery, which concluded on March 1, 2021. Defendant now moves for summary judgment with respect to Fleck's claims, Dkt. 49. [1] For the reasons set forth below, the Court will **GRANT** in part and **DENY** in part Defendant's motion.

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I. BACKGROUND

A. Factual Background

The following facts are taken from the parties' statements of material fact and responses thereto. *See* Dkt. 49-1 (Def. SUMF); Dkt. 53-1 at 1–6 (Pl. Resp. to Def. ***31** SUMF); Dkt. 53-1 at 6–36 (Pl. SMF); Dkt. 56-1 at 6–36 (Pl. Sealed SMF); Dkt. 58-1 (Def. Resp. to Pl. SMF). The Court will summarize the relevant portions of the record and, where relevant, note the parties' disagreements. *See Seo v. Oh*, No. 18-785, 2021 WL 4318100, at *3 (D.D.C. Sept. 23, 2021). Consistent with Federal Rule of Civil Procedure 56, the Court will view the evidence in the light most favorable to Fleck, who is the nonmoving party, and will draw all reasonable inferences in his favor. *See* Fed. R. Civ. P. 56; *Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011).

In May 2016, Plaintiff Robert Fleck left a twelve-year career working as a lawyer for the Army to join the VA's Office of General Counsel ("VA OGC" or "OGC") as Chief Counsel of the Procurement Law Group, a Senior Executive Service ("SES") position. Dkt. 53-1 at 9 (Pl. SMF ¶ 18). The Procurement Law Group is one of three components of the OGC's Contract Law Operations division, which also includes the Real Property Law Group and the District Contracting National Practice Group. *Id.* In his capacity as Chief Counsel of the Procurement Law Group, Fleck also served as a senior manager of the Contract Litigation Team. Dkt. 58-1 at 8 (Def. Resp. to Pl. SMF ¶ 21).

Around the time Fleck joined OGC, the office had been experiencing significant e-discovery problems, Dkt. 53-1 at 9 (Pl. SMF ¶ 19), and, in April 2016, it had received approval to hire an attorney for a new e-discovery position, Dkt. 56-1 at 10 (Pl. Sealed SMF ¶ 21); Dkt. 58-1 at 8 (Def. Resp. to Pl. SMF ¶ 21). A decision was eventually made to locate that e-discovery position within the Real Property Law Group. Dkt. 56-1 at 10 (Pl. Sealed SMF ¶ 21).

In June 2016, the senior leadership of the OGC participated in a group call during which the e-discovery position was discussed. Dkt. 53-1 at 11 (Pl. SMF ¶ 28). This call included three SES-level employees—Fleck, Deputy General Counsel Richard Hipolit, and General Counsel Michael Hughes—and six other employees who, at the time, were GS-15 level or below: Cameron Gore, Charlma Quarles, Lisa House, Don Mobly, Barbara Stutuzer, and Vincent Buonocore. *Id.* at 11 (Pl. SMF ¶ 30); Dkt. 58-1 at 11–12 (Def. Resp. to Pl. SMF ¶ 27). The parties agree that on this call Fleck's wife, Kristina Wiercinski, who at the time worked as a lawyer for the Army, was discussed as a possible candidate for the e-discovery position. *See* Dkt. 58-1 at 12 (Def. Resp. to Pl. SMF ¶ 31). There is conflicting evidence in the record, however, regarding the extent to which Fleck contributed to that conversation. One of the participants on the call, Vincent Buonocore, recalls that he first raised Wiercinski's name on the call because he had previously worked with her in the Army and knew that she had e-discovery experience. Dkt. 53-1 at 13–14 (Pl. SMF ¶ 42); Dkt. 53-4 at 20 (Buonocore Decl. ¶ 3). Buonocore does not remember Fleck "recommend[ing] Ms. Wiercinski for the e-discovery position" or "promot[ing] her candidacy in any other way." Dkt. 53-4 at 20 (Buonocore Decl. ¶ 4). Two other participants remember things differently. Michael Hughes recalls Fleck "mention[ing] that his wife [had] experience in that particular area" and "describ[ing] what her background and experience was." Dkt. 53-1 at 12 (Pl. SMF ¶ 33). Richard Hipolit's memory is less clear. "[T]he gist" of what he recalls "is [Fleck] saying that [his wife] would be ... a qualified candidate," but he also cautions that he does not "remember exactly what [Fleck] said" and does not "remember [Fleck] saying that she would be a good candidate." *Id.* (Pl. SMF ¶ 34). Instead, Hipolit says he was left with "the impression she would be a candidate." *Id.*

***32** For his part, Fleck told OIG investigators that when Buonocore suggested his wife would be a good candidate, he said "if that's the case, I'm not involved in it. I don't want to be part of it. I'm not in it." Dkt. 53-3 at 151 (Fleck Tr. at 65). Later, however, Fleck explained that "in hallway discussion[s] or [on] conference call[s]," "Cam Gore and Reid Nicolosi kept on asking" him about his wife's candidacy for the position. *Id.* at 151–52 (Fleck Tr. at 65–66); *see* Dkt. 53-1 at 13–14 (Pl. SMF ¶ 36). Fleck recalls that he "absolutely [did] not" recommend her for the position—calling that a "line" he would not cross—but did confirm that he told Gore and Nicolosi that "she did e-discovery" for "five years" and, "when asked, [he] would answer that she had the experience and could do the job." Dkt. 53-3 at 152 (Fleck Tr. at 66–68); *see* Dkt. 53-1 at 13–14 (Pl. SMF ¶ 36).

On June 10, 2016, Hipolit sent Fleck an email that said: "Bob, this is a draft policy on salaries for new attorneys that I mentioned. It is going to be circulated to the Chief Counsels for comment before it is finalized, but we could make a good case for our e-Discovery expert under these factors, we should be in good shape. If you can get me a resume, we can think

this through and move forward." Dkt. 58-5 at 2 (Hipolit Tr. 29); Dkt. 58-1 at 17 (Def. Resp. to Pl. SMF ¶ 43). In response, Fleck forwarded Wiercinski's résumé, along with the message "Resume as we discussed." Dkt. 53-1 at 14 (Pl. SMF ¶ 43).

In the ensuing months, OGC set about designing the e-discovery position and planning the vacancy announcement. The parties dispute the extent to which Fleck was involved in that process. The email record from that period shows that Fleck was sent or copied on five emails from OGC employees regarding the position description. Dkt. 49-3 at 15–16 (OIG report). On Fleck's telling, he had no involvement in either designing the position or creating the position description, and while he acknowledges that he was included on emails about the position description, he notes that he did not send any emails back drafting or editing the description. Dkt. 53-1 at 10 (Pl. SMF ¶¶ 22, 25–26). OIG, in contrast, maintains that Fleck's involvement was more substantial. It points to statements by Cameron Gore, the official responsible for filling the new e-discovery position, who told OIG investigators that Fleck participated in conversations about the position description because he had experience with e-discovery matters. Dkt. 58-1 at 9–10 (Def. Resp. to Pl. SMF ¶¶ 22, 25–26); Dkt. 49-3 at 15–16 (OIG report). Specifically, Gore said that "Fleck had as much input as he did on the [position description] and that they were working together and collaborating on the e-Discovery [position description] as well as other [positions descriptions]." Dkt. 49-3 at 15 (OIG report).

OGC posted the e-discovery position on August 12, 2016, with applications due on August 19, 2016. Dkt. 53-1 at 14 (Pl. SMF ¶ 45). The announcement required external candidates to send their applications to Gore, who, as head of the Real Property Law Group, would be the selecting official for the position. *Id.* (Pl. SMF ¶ 48); Dkt. 58-1 at 19 (Def. Resp. to Pl. SMF ¶ 48). On August 16, 2016, Fleck forwarded the position description to Wiercinski, Dkt. 53-1 at 14 (Pl. SMF ¶ 46), who submitted her application to Gore on August 18, 2016, *id.* at 15 (Pl. SMF ¶ 50).

Three candidates applied for the position in total. *Id.* (Pl. SMF ¶ 51). Gore then assembled a "Best Qualified Panel" of three OGC employees—Katherine Smyth, Benjamin Diliberto, and Reid Nicolosi—to formally review the applications. *Id.* (Pl. SMF ¶ 52). The parties vigorously dispute what happened next. According to Fleck, ***33** sometime in "mid- to late-September," Gore telephoned Wiercinski and informally offered her the job, which she then accepted on the understanding that a formal offer would follow. *Id.* (Pl. SMF ¶ 53).

Defendant insists that no such call or informal offer ever occurred. On this score, it points to several pieces of evidence. First, Gore testified that he could not remember whether he made such a call, but added that he "did not have authority to let [Wiercinski] know ... that she had the job" until the hiring "panel came back to [him]," which was in October. Dkt. 58-4 at 2–3 (Gore Tr. at 63–65, 67–68). Given the passage of time, however, he asked OIG to "check the phone records" to make sure. *Id.* at 3 (Gore Tr. at 66). OIG then asked Fleck and Wiercinski to provide any phone numbers that Gore might have called and then asked Gore for his VA office phone number, his VA cell phone number, and his personal cell phone number. Dkt. 49-3 at 19 (OIG report). OIG analyzed the telephone records associated with those numbers and found no evidence of a call taking place until after the hiring panel made its recommendation to Gore on October 4, 2016, although Wiercinski did receive several phone calls during that period from "unavailable" numbers. *Id.* at 19, 54; Dkt. 53-1 at 18 (Pl. SMF ¶ 65). According to OIG, the absence of any call from Gore was also consistent with the contemporaneous email record surrounding Wiercinski's hiring: Gore's emails show that, as late as October 3, 2016, he was still planning to hold interviews for the open position. Dkt. 49-3 at 29.

In any event, what is not disputed is that on September 30, 2016, Fleck sent Wiercinski an internal VA memo that catalogued various VA e-discovery "system failures" and contained privileged attorney work product. Dkt. 53-1 at 15 (Pl. SMF ¶ 55); Dkt. 58-1 at 21 (Def. Resp. to Pl. SMF ¶ 55); Dkt. 56 at 19. Fleck and Wiercinski both maintain, however, that Fleck sent this information to Wiercinski only *after* Gore had informally given her the job in mid to late September, so that Wiercinski could "get up to speed" quickly because the VA's e-discovery had "major problems" and "stuff [was] hitting the fan." Dkt. 53-3 at 153 (Fleck Tr. at 99–100). As discussed, Defendant disputes that any such call ever occurred.

On October 4, 2016, Gore received the Best Qualified Panel's evaluation of the three candidates. Dkt. 53-1 at 16 (Pl. SMF ¶ 57). The panel rated Wiercinski "exceptional" in each areas of evaluation and deemed her to be the best qualified among the candidates. *Id.* at 16 (Pl. SMF ¶ 59); Dkt. 58-1 at 22 (Def. Resp. to Pl. SMF ¶ 59). An hour after Gore received the panel's recommendation, Gore emailed Human Resources to

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say that he was selecting Wiercinski for the position and that he would "like to notify her of my decision today, and that HR will be relaying the official offer to her shortly." Dkt. 49-3 at 33. Gore called Wiercinski to offer her the position, which she accepted. *See* Dkt. 58-1 at 25–26 (Def. Resp. to Pl. SMF ¶ 65).

Several months later, in 2017, the VA OIG's Administrative Investigations Division received an allegation that Fleck "actively and openly solicited, during a conference call with other [SES] employees that the VA [OGC] hire his wife." Dkt. 49-1 at 1 (Def. SUMF ¶ 1); Dkt. 53-1 at 1 (Pl. Resp. to Def. SUMF ¶ 1). That allegation triggered an OIG investigation into Wiercinski's hiring, which culminated in a report issued on March 29, 2018. Dkt. 49-1 at 2 (Def. SUMF ¶ 2); *see also* Dkt. 49-3 at 7–26 (OIG Report). That report detailed the process surrounding Wiercinski's hiring and made several findings, including the following:

***34** • "Mr. Fleck, by recommending his wife for the position of e-Discovery Coordinator, advocated for his wife's employment." Dkt. 49-3 at 20 (OIG report).

- "Mr. Fleck ... referred [his wife] to Mr. Gore, who ultimately hired [her], and who, at the time, was a GS-15 Deputy Chief Counsel." *Id.* (OIG report).
- "There is a direct connection between Mr. Fleck referring his wife to Mr. Gore, and Mr. Gore being influenced by that referral." *Id.* (OIG report).
- "Mr. Fleck, as the Chief Counsel in charge of bringing the Contract Litigation Team together, participated personally and substantially in a particular matter in which he and his spouse had a financial interest" by (1) "[b]eing involved in the conversation regarding the team having an e-Discovery Coordinator," (2) "[a]dvocating for his wife's employment as the e-Discovery Coordinator," (3) "[p]articipating in a discussion regarding pay," (4) "[p]articipating in announcing the position," and (5) "[s]ending his wife VA sensitive data regarding e-Discovery matters that were not available to other candidates." *Id.* (OIG report).
- "Mr. Fleck shared VA sensitive data with Ms. [Wiercinski] before she was selected." *Id.* at 21 (OIG report).
- "The investigation determined that Mr. Fleck and Ms. [Wiercinski] made false statements about when Ms. [Wiercinski] was selected for the e-Discovery position to lessen the potential consequences of Mr. Fleck having shared VA sensitive data with a non-VA employee." *Id.* (OIG report).

Ultimately, the report concluded that "Mr. Fleck engaged in nepotism and acts affecting his personal financial interest when he used his position to advocate for the employment of his wife and participated in establishing for her a GS-14 e-Discovery attorney position on a team that he would ultimately lead." *Id.* at 19–20. OIG attached as an appendix to its report a letter from the Deputy Secretary of the VA, Thomas Bowman, dated February 9, 2018, in which Bowman stated that he had "reviewed and concur[s] with the findings and recommendation in the OIG report." Dkt. 49-3 at 23.

During its investigation, OIG twice referred findings to the Department of Justice for possible criminal prosecution pursuant to its obligation under the Inspector General Act to report a matter to the Department of Justice any time "reasonable grounds" arise to believe that there has been a violation of federal criminal law. *See* Inspector General Act of 1978, Pub. L. No. 95-452, § 4(d), 92 Stat. 1101, 1103 (codified as amended at 5 U.S.C. app.). On August 30, 2017, OIG presented allegations of nepotism and conflict of interest for a prosecution determination, Dkt. 56-1 at 46 (Def. Resp. to Pl. SMF ¶ 128), and on October 20, 2017, OIG submitted allegations of false statements to DOJ for a prosecution determination, *id.* at 47 (Def. Resp. to Pl. SMF ¶ 130). Both times, the Department of Justice declined to prosecute. *Id.* at 46, 47 (Def. Resp. to Pl. SMF ¶¶ 129, 131).

In October 2017, while OIG's investigation was wrapping up but before it issued its report, Fleck applied for the soon-to-be vacant position of Deputy General Counsel for Legal Operations. Dkt. 53-1 at 29 (Pl. SMF ¶ 132). On November 14, 2017, a Best Qualified Panel comprised of James Byrne (the General Counsel), Megan Flanz (the outgoing Deputy General Counsel for ***35** Legal Operations), and Michael Hogan (the Deputy General Counsel for General Law) interviewed Fleck for the vacancy. *Id.* (Pl. SMF ¶ 133); Dkt. 49-6 at 1 (Flanz Decl. ¶¶ 2–3); Dkt. 49-7 at 1 (Hogan Decl. ¶¶ 2–3). One to two days later, on either November 15 or 16, Byrne notified Fleck that he had not been selected for the position. Dkt. 49-9 at 43 (Fleck Dep. at 98). On November 17, 2017, Byrne announced that Cathy Mitrano—who at the time served as Chief Counsel of the VA OGC's Southeast District South—had been selected. Dkt. 56-1 at 29 (Pl. SMF ¶ 134); Dkt. 58-1 at 48–49 (Def. Resp. to Pl. SMF ¶ 135); *see also* Dkt. 49-6 at 2–3 (Flanz Decl. ¶¶ 4–9); Dkt. 49-7 at 2–3 (Hogan Decl. ¶¶ 4–9).

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OIG completed its initial internal draft of the report on November 17, 2017, Dkt. 58-1 at 48 (Def. Resp. to Pl. SMF ¶ 134); Dkt. 73-1 at 8 (case log), and circulated a final draft and a copy of the materials cited therein to VA management for review and comment on January 10, 2018, Dkt. 58-1 at 48 (Resp. to Pl. SMF ¶ 134); Dkt. 53-3 at 287; Dkt. 73-1 at 8 (case log). OIG also sent a copy of the draft report and cited materials to OGC management. Dkt. 58-1 at 39–40, 48 (Def. Resp. to Pl. SMF ¶¶ 108, 134). Subsequently, Cathy Mitrano, the proposing official, charged Fleck with "conduct [u]nbecoming" and "disclosure of sensitive information" in connection with the hiring of his wife and formally proposed that he receive a demotion from the SES level to the GS-15 level. *Id.* at 40 (Def. Resp. to Pl. SMF ¶ 108); Dkt. 73-5 at 2–6 (proposed demotion letter).

Fleck retained a lawyer to challenge the demotion. Dkt. 53-1 at 26 (Pl. SMF ¶ 110). With the assistance of counsel, he submitted a written response and attached two pieces of evidence. *Id.*; Dkt. 73-4 (response letter). The first was a declaration from Vincent Buonocore. Dkt. 53-4 at 20 (Buonocore Decl.). Buonocore attested that on the June 2016 call, he first raised Wiercinski's name as a possible candidate for the e-Discovery position because he had "supervised [her] when [they] were both attorneys for the army, and she had done an exceptional job handling e-discovery for some of the army's most complex cases." *Id.* (Buonocore Decl. ¶ 3). Buonocore further stated that he did "not remember Robert Fleck—on that phone call or at any other time—to have recommended Ms. Wiercinski for the e-discovery position at the VA or to have promoted her candidacy in any other way." *Id.* (Buonocore Decl. ¶ 4). Because OIG did not interview Buonocore, this account was not included in its final report.

Fleck also attached a sworn statement from Benjamin Diliberto, who was on the Best Qualified Panel that recommended Wiercinski's hiring and had been interviewed by OIG back in June 2017 as part of their investigation. Dkt. 58-1 at 41 (Def. Resp. to Pl. SUMF ¶ 112); Dkt. 53-4 at 136–37 (Diliberto Stmt.). In his statement, Diliberto took issue with two findings in the OIG report, which he said conflicted with his experience: first, that Fleck "helped establish for Ms. Wiercinski an e-Discovery attorney position" and, second, that Fleck "advocated for her employment." Dkt. 53-4 at 136 (Diliberto Stmt.). With respect to the first finding, Diliberto explained that "OIG's implication that [Fleck] w[as] responsible for the creation of the position is utterly ridiculous" because "discussions about hiring a dedicated e-Discovery attorney" took place "[m]ore than a year before [Fleck] w[as] even hired at VA." *Id.* And with respect to OIG's second finding, Diliberto asserted that "[t]he implication that [Fleck] somehow influenced the determination of the Best Qualified Panel is absurd" because "[Diliberto] and [Fleck] never spoke about Ms. Wiercinski before she was hired;" Diliberto ***36** "had no idea who she was when [he] reviewed her resume;" and Wiercinski "was, by a wide margin, the most qualified applicant." *Id.* Although OIG had interviewed Diliberto, it did not include any of his testimony in its report, and it did not include Diliberto's interview transcript with the materials it sent along with the report to VA management. Dkt. 58-1 at 42 (Def. Resp. to Pl. SMF ¶¶ 114–15).

Fleck submitted his response to VA General Counsel Byrne, who was responsible for deciding whether Fleck would receive discipline. *Id.* at 40–41 (Def. Resp. to Pl. SMF ¶¶ 110–11). After reviewing Fleck's response and Buonocore's and Diliberto's statements, Byrne asked OIG for a transcript of the Diliberto interview and questioned why they had not interviewed Buonocore. *Id.* at 42 (Def. Resp. to Pl. SMF ¶¶ 114, 116). On April 13, 2018, Byrne decided not to demote Fleck and instead imposed written counseling as discipline for (what he characterized as) Fleck's "technical violation" of sharing sensitive information. *Id.* at 41 (Def. Resp. to Pl. SMF ¶¶ 111–12); Dkt. 73-6 (Byrne decision letter).

Deputy Secretary Bowman also reviewed the additional evidence that Fleck provided in his response. Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 76). On May 16, 2018, Bowman rescinded most of his concurrence with the OIG report. Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 76); Dkt. 73-3 at 1 (Bowman rescission letter). He explained that "[g]iven further evidence that has been presented on this matter that was not a part of the record provided to me ... I disagree with all of the findings in the report, except for the finding on sharing sensitive information." Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 76); Dkt. 73-3 at 1 (Bowman rescission letter). The letter was not publicly released, and OIG did not update the appendix of its report to replace Bowman's previous concurrence letter. Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 77); Dkt. 53-1 at 19 (Pl. SMF ¶ 77).

In addition to the proposed demotion, Fleck points to several adverse consequences that he claims resulted from the issuance of the OIG report. For instance, in late 2018, the Office of Accountability and Whistleblower Protection ("OAWP") opened an investigation into Fleck based on an allegation that Fleck had hired three former colleagues from

the Department of the Army into VA positions. Dkt. 53-1 at 31 (Pl. SMF ¶ 147). Fleck retained counsel to represent him in the OAWP investigation. *Id.* (Pl. SMF ¶ 148).

In February 2018, before the OIG report was published, Fleck applied for a job at the Department of Defense. Dkt. 53-1 at 30 (Pl. SMF ¶ 138). The parties agree that Fleck was qualified for the role, and Fleck received an interview for the position, which took place on April 3, 2018. *Id.* (Pl. SMF ¶¶ 138–39); Dkt. 58-1 at 49 (Def. Resp. to Pl. SMF ¶ 138–39). OIG published its report four days before Fleck's interview; however, no one at the interview mentioned the report. *Id.* (Pl. SMF ¶ 142). The following day, one of Fleck's interviewers notified him that he had not received the position. *Id.* (Pl. SMF ¶ 143).

Fleck also applied to several private sector jobs in the defense industry throughout 2018. Dkt. 53-5 at 6 (Fleck Answer to Interrog. 2). The parties dispute whether these jobs paid more than Fleck's current job and whether Fleck was qualified for the vacancies. Dkt. 58-1 at 45 (Def. Resp. to Pl. SMF ¶¶ 124, 126). They agree, however, that Fleck did not receive interviews for any of these positions. *Id.*

Finally, Fleck asserts that, after the report was published, he suffered adverse effects on his health. Dkt. 53-1 at 31 (Pl. SMF ¶ 145). The parties dispute, however, whether Fleck's health problems, which ***37** predated the issuance of the report, were caused or exacerbated by the report's issuance. Dkt. 58-1 at 51–52 (Def. Resp. to Pl. SMF ¶¶ 145–46).

B. Procedural Background

On June 20, 2018, Fleck filed a two-count complaint alleging claims under two provisions of the Privacy Act, 5 U.S.C. § 552a(g)(1)(C) and (D), Dkt. 1, which he amended on October 5, 2018. Dkt. 12. On November 15, 2018, Defendant filed a motion to dismiss the complaint, which the Court denied in a Memorandum Opinion and Order on January 3, 2020. Dkt. 21. Defendant then filed its answer, Dkt. 24, and moved for judgment on the pleadings, Dkt. 26. On February 19, 2022, the Court held an initial scheduling conference with the parties, at which it denied Defendant's motion for judgment on the pleadings and heard and granted an oral motion by Fleck to amend the complaint a second time. Min. Entry (Feb. 19, 2020). Fleck filed his second amended complaint on February 28, 2020. Dkt. 31. The parties then began a year-long period of discovery, which concluded on March 1, 2021. *See* Min. Entry (Feb. 19, 2020); Min. Order (Dec. 22, 2020). On June 14, 2021, Defendant moved to dismiss or, alternatively, for summary judgment. Dkt. 49. On August 6, 2021, Fleck opposed Defendant's motion, Dkt. 53, and moved to strike the affidavit of one of Defendant's witnesses for failure to comply with the expert-disclosure requirements of Rule 26(a)(2), Dkt. 52. Those motions are now before the Court.

II. LEGAL STANDARD

A party is entitled to summary judgment under Federal Rule of Civil Procedure 56 if it can "show[ ] that there is no genuine dispute as to any material fact and [that it] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment "bears the initial responsibility" of "identifying those portions" of the record that "demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A fact is "material" if it could affect the outcome of the litigation under governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). And a dispute is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *See Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007). The Court must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor. *See Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011).

If the moving party carries this initial burden, the burden then shifts to the nonmoving party to show that sufficient evidence exists for a reasonable jury to find in the nonmoving party's favor with respect to the "element[s] essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* (quoting *Holcomb v. Powell*, 433 F.3d 889, 895 (D.C. Cir. 2006)). The nonmoving party's opposition, accordingly, must consist of more than unsupported allegations or denials, and must be supported by affidavits, declarations, or other competent evidence setting forth specific facts showing that there is a genuine issue for trial. *See* Fed. R. Civ. P. 56(c); *Celotex*, 477 U.S. at 324, 106 S.Ct. 2548. That is, once the moving party carries its initial burden on summary judgment, the nonmoving party must provide evidence that would permit a reasonable jury to find in its favor. *See Laningham v. U.S. Navy*, 813 F.2d 1236, 1241 (D.C. Cir. 1987). If the nonmoving party's evidence is "merely colorable" or "not significantly ***38** probative," the Court should grant summary judgment. *Liberty Lobby*, 477 U.S. at 249–50, 106 S.Ct. 2505.

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III. ANALYSIS

The Privacy Act, 5 U.S.C. § 522a, "safeguards the public from unwarranted collection, maintenance, use and dissemination of personal information contained in agency records." *Henke v. U.S. Dep't of Commerce*, 83 F.3d 1453, 1456 (D.C. Cir. 1996) (quotation marks omitted). The Act authorizes four types of civil actions. *See* 5 U.S.C. § 552a(g)(1); *Doe v. Chao*, 540 U.S. 614, 618–19, 124 S.Ct. 1204, 157 L.Ed.2d 1122 (2004). Fleck invokes two of them. First, he asserts a claim under Section 552a(g)(1)(C). That provision creates a civil action against an agency if the agency "fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination ... that may be made on the basis of such [a] record," and that failure causes "a determination [to be] made which is adverse to the individual." 5 U.S.C. § 552a(g)(1)(C).

Second, Fleck invokes Section 552a(g)(1)(D). That provision permits individuals to sue if the agency "fails to comply with any other provisions of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on [the] individual." *Id.* § 552a(g)(1)(D). As a predicate to his Section 552a(g)(1)(D) claim, Fleck says that Defendant violated two substantive provisions of the Privacy Act: Sections 552a(e)(5) and (6).

Section 552a(e)(5) is nearly identical to Section 552a(g)(1)(C). It requires an agency that maintains a system of records to "maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination." *Id.* § 552a(e)(5). Section 552a(e)(6) adds somewhat different obligations. It provides that

> [e]ach agency that maintains a system of records shall ... prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes.

Id. § 552a(e)(6). Subsection (b)(2), in turn, covers disclosures required under the Freedom of Information Act. *Id.* § 552a(b)(2).

A plaintiff may recover damages under Section 552a(g)(1)(C) and (D) only if he proves that (1) the agency's violation of the Privacy Act proximately caused the adverse determination or adverse effect at issue, (2) the agency "acted in a manner [that] was intentional or willful," and (3) the plaintiff suffered "actual damages." *Id.* § 552a(g)(4); *Dickson v. Off. of Pers. Mgmt.*, 828 F.2d 32, 37 (D.C. Cir. 1987). Actual damages under the Privacy Act are limited to pecuniary harms only and do not extend to recoveries for "loss of reputation, shame, mortification, injury to the feelings, and the like." *FAA v. Cooper*, 566 U.S. 284, 295–97, 132 S.Ct. 1441, 182 L.Ed.2d 497 (2012) (quotation marks omitted).

Fleck points to several alleged inaccuracies and omissions in the OIG report that, he claims, violated the Privacy Act and caused him actual damages in the form of lost job opportunities, legal fees, and increased health care costs. Defendant, in turn, argues that Fleck cannot maintain a Privacy Act suit against it because the OIG report is exempt from the substantive provisions of Privacy Act. And even if it is not, Defendant asserts that Fleck has ***39** failed to establish a material dispute of fact as to whether it violated any of the substantive provisions of the Privacy Act; whether any such violations were intentional or willful; and whether the violations proximately caused Fleck actual damages. The Court will address each of these arguments in turn.

A. Exemptions

Defendant maintains that the Court need not examine whether Fleck has adduced sufficient evidence to support a Privacy Act claim because two exemptions to the Privacy Act apply in this case. First, it claims that Fleck cannot assert a violation of Section 552a(e)(5) because the OIG report at issue is "part of a system of records that the VA has exempted from the requirements of section 552a(e)(5) and from the civil remedy provisions of Section 552a(g) pursuant to 5 U.S.C. § 552a(j)(2)." Dkt. 49 at 11. Second, Defendant contends that the report is exempt from Section 552a(e)(6) because the disclosure of the report "would be required under the Freedom

of Information Act," pursuant to Section 552a(b)(2). *Id.* at 13 (quotation marks omitted).

Defendant raised each of these exemptions in its motion to dismiss. *See* Dkt. 21 at 9, 19. The Court deferred decision as to whether the exemptions barred Fleck's claims, however, because the facts necessary to resolve Defendant's Section 552a(j)(2) affirmative defense were not alleged on the face of the complaint, *id.* at 11–12, and because Defendant's argument with respect to Section 552a(e)(6)'s Freedom of Information Act ("FOIA") exemption was underdeveloped, *id.* at 19–20. Now that the parties have completed discovery, Defendant has reasserted its affirmative defenses. At this stage, the Court concludes that the undisputed facts establish that Section 552a(j)(2)'s exemption bars Fleck's claim under Section 552a(g)(1)(C) and his Section 552a(g)(1)(D) claims predicated on alleged violations of Section 552a(e)(5). Accordingly, the Court will grant Defendant's motion for summary judgment with respect to those claims. But, the Court also concludes that Section 552a(e)(6)'s FOIA exemption does not apply in this case, and thus Defendant is subject to potential liability under Section 552a(g)(1)(D) for any violations of Section 552a(e)(6).

1. *Section 552a(j)(2) Exemption*

Section 552a(j)(2) of the Privacy Act permits the "head of any agency" to "promulgate rules ... to exempt any system of records within the agency from any part of [the Privacy Act]" "if the system of records is," as relevant here,

> maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of ... information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual ....

5 U.S.C. § 552a(j)(2). The Act excludes certain enumerated subsections from this exemption, however, including Section 552a(e)(6). *Id.* § 552a(j).

Based on this provision, Defendant argues that the Section 552a(e)(5) predicate to Fleck's Section 552a(g)(1)(D) cause of action, as well as his Section 552a(g)(1)(C) cause of action, *see Lugo v. Dep't of Justice*, 214 F. Supp. 3d 32, 38–39 (D.D.C. 2016), is barred because the OIG report is part of a system of records that the VA ***40** has exempted under Section 552a(j)(2) and because the component of the VA that maintains that system of records "performs as its principal function any activity pertaining to the enforcement of criminal laws." 5 U.S.C. § 552a(j)(2). To establish the exemption's applicability, Defendant submits a declaration from David Johnson, who has served as the Assistant Inspector General for Investigations since May 2019. Dkt. 49-5 at 1 (Johnson Decl. ¶ 2). Drawing on his knowledge of the VA OIG, including its organization and functions, and the systems of records that OIG uses to maintain information related to its investigations, Johnson attests, among other things, to the following:

- "The VA OIG is vested with law enforcement authority pursuant to Section 6(e)(3) of the Inspector General Act of 1978." *Id.* at 2 (Johnson Decl. ¶ 3).
- The Attorney General has issued guidelines for Inspectors General, including the VA OIG, that confirm that Inspectors General have "concurrent responsibility" with the FBI to "prevent[ ] and detect[ ] fraud and other criminal activity within their agencies." *Id.* (Johnson Decl. ¶ 3).
- "The Office of Investigations is the directorate within the VA OIG that investigates potential crimes and other violations of law involving VA programs and operations." *Id.* (Johnson Decl. ¶ 4).
- "The principal function of this directorate was, and is, investigative activity pertaining to the enforcement of criminal laws." *Id.* at 2–3 (Johnson Decl. ¶ 4).
- "In the 2017-2018 time frame ..., this directorate was ... staffed by more than 200 employees, including approximately 170 special agents (OPM series 1811)." *Id.* at 2 (Johnson Decl. ¶ 4).
- "During the time period at issue, the VA OIG's Administrative Investigations Division was located

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within the Office of Investigations and was staffed by approximately 7-10 investigators (OPM series 1810)." *Id.* at 3 (Johnson Decl. ¶ 4).

- "The investigation into potential conflicts of interest, nepotism, and false statements by Mr. Fleck was conducted by the Administrative Investigations Division." *Id.* at 3–4 (Johnson Decl. ¶ 5).
- "[A]lthough investigations undertaken by the Administrative Investigations Division generally focused on possible administrative violations, they easily could encompass potential violations of criminal law and result in a report of an investigation into suspected criminal activity." *Id.* at 3 (Johnson Decl. ¶ 4).
- "As is typical in such investigations, the investigation into Mr. Fleck's alleged conduct was undertaken with attention to whether the alleged conduct violated any criminal laws ..., including 18 U.S.C. § 208 [acts affecting a personal financial interest] and 18 U.S.C. § 1001 [false statements]." *Id.* at 4 (Johnson Decl. ¶ 6).
- "During the course of the investigation, the VA OIG presented the case twice to the United States Attorney's Office for the District of Columbia for prosecution decisions, once in August 2017 and a second time in October 2017." *Id.* at 4 (Johnson Decl. ¶ 7).
- "The records collected and created as part of this investigation, including the final report, are contained in a system of records (11VA51) that is maintained by the Office of Investigations. ***41** Those records encompass information pertaining to criminal law enforcement-related activities because they were compiled for the purposes of investigating possible violations of federal criminal laws (e.g., 18 U.S.C. § 208 and 18 U.S.C. § 1001), along with potential administrative violations." *Id.* at 4 (Johnson Decl. ¶ 8) (citation omitted).

According to Defendant, these attestations demonstrate that the OIG report qualifies for the Section 552a(j)(2) exemption because the Secretary of the VA, by rule, has exempted the relevant system of records, 11VA51, from the Privacy Act pursuant to Section 552a(j)(2). Dkt. 49 at 11; *see* 38 C.F.R. § 1.582(b)(1) (exempting 11VA51).

Fleck disagrees and asserts that a genuine dispute of material fact exists as to whether VA OIG "perform[s] as its principal function any activity pertaining to the enforcement of criminal laws." Dkt. 56 at 36. First, Fleck points out that it is not sufficient that *one* of the agency's functions is related to investigating criminal conduct; rather, it must be the agency's "[c]hief," "primary," or "most important" one. *Id.* at 38 (citing *Principal*, Black's Law Dictionary (11th ed. 2019)). Second, he asserts that the only evidence in the record with respect to OIG's "principal function" comes from the Johnson Declaration. *Id.* at 37–38. But that declaration, Fleck says, is inadmissible because it contains expert testimony that was not timely disclosed under Federal Rule of Civil Procedure 26(a)(2); because Johnson offers improper legal opinions about the ultimate question of law for OIG's affirmative defense; and because Johnson has no personal knowledge of the OIG's activities during the time in question. *Id.* at 38 & n.14; Dkt. 52 at 3. Accordingly, Fleck moves to strike the Johnson Declaration from the record and preclude the government from asserting the affirmative defense as a sanction. Dkt. 52 at 1–2.

As an initial matter, the Court will deny Fleck's motion to strike the Johnson Declaration. The Court agrees with Defendant that Johnson is properly viewed as a fact witness. *See* Dkt. 57 at 3. As Johnson explains in his declaration, the information he provides about the Office of Investigations' historical organization, functions, and systems of records is knowledge that he has "obtained in connection with [his] duties" as the head of that directorate, as well as his "review of investigative records and the report issued regarding Robert Fleck." *See* Dkt. 49-5 at 1–2 (Johnson Decl. ¶ 2). Thus, to the extent that Johnson's testimony draws an inference with respect to the "principal function" of the Office of Investigations, that inference is a lay opinion because it does not result from a "process of reasoning which can be mastered only by specialists in the field," but rather observational "process[es] of reasoning familiar in everyday life." Fed. R. Evid. 701, Advisory Committee's note to 2000 amendment.

Cases involving testimony about business operations are instructive. In that context, numerous courts have held that Federal Rule of Evidence 701 does not restrict business owners or officials from testifying or offering lay opinions about their office's operations, so long as their testimony or opinion is based on particularized knowledge they have obtained in the course of their duties. *See, e.g.*, *Tex. A&M Rsch. Found. v. Magna Transp., Inc.*, 338 F.3d 394, 403 n.12 (5th Cir. 2003); *F.T.C. v. Cap. City Mortg. Corp.*, No. 98-237, 2002 WL 34703470, at *2–3, 2002 U.S. Dist. LEXIS 28693, at *4–6 (D.D.C. Mar. 28, 2002). The Advisory Committee notes to Rule 701, moreover, expressly state that the 2000 amendment to Rule 701, which clarified that

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lay opinion testimony ***42** cannot be "based on scientific, technical, or other specialized knowledge," did "not purport to change" the pre-existing admissibility of lay opinions based on "the particularized knowledge that [an owner or officer of a business] has by virtue of his or her position in the business." Fed. R. Evid. 701, Advisory Committee's note to 2000 amendment. There is no reason why the same analysis should not also apply to the structure and practices of government offices.

Nor does the fact that some of the information to which Johnson attests predates his arrival at OIG render his testimony improper. Johnson represents that he obtained all of the information in his declaration in the course of his duties as the head of the Office of Investigations. In that capacity, Johnson undoubtedly has access to and has acquired knowledge about the past procedures, structure, and practices of the office he leads. That is all that is required to establish personal knowledge.

Finally, the Court observes that Johnson's inference that the "principal function" of the Office of Investigations was "investigative activity pertaining to the enforcement of criminal laws" is not an improper legal conclusion. The extent to which an activity is a "principal function" of an agency or component thereof is an empirical question, not a legal conclusion. For that reason, Fleck's invocation of the D.C. Circuit's opinion in *Burkhart v. Washington Metropolitan Area Transit Authority*, 112 F.3d 1207, 1214 (D.C. Cir. 1997)—which concern a witness's opinion testimony regarding a "legal term of art"—is inapt. Johnson may testify to an inference he has drawn based on his particularized knowledge of the structure and activities of the Office of Investigations. Accordingly, the Court will deny Fleck's motion to strike.

Based on the undisputed facts set forth in the Johnson Declaration, the Court concludes that Defendant has met its burden to show that the OIG report is maintained in a system of records that is exempt from the requirements of Section 552a(e)(5) and from the cause of action under Section 552a(g)(1)(C). The Court notes at the onset that Fleck directs his arguments at the functions of the VA OIG *as a whole*. Those arguments miss the mark, however, because the appropriate unit of analysis is the VA OIG *Office of Investigations*, which is the "component" of the VA that "maintains" 11VA51, the system of records at issue. This conclusion follows from the VA rule that exempts 11VA51 from the requirements of the Privacy Act, which lists the "location" of the system of records as the "Office of Investigations" and describes the records within this system as "maintained" by the "Assistant Inspector General for Investigations" and the "OIG Office of Investigations." Privacy Act of 1974; System of Records, 73 Fed. Reg. 46713, 46715, 46716 (Aug. 11, 2008). In invoking the exemption, the Secretary of the VA determined that the relevant "component" for the purpose of Section 552a(j) is the Office of Investigations, not the VA OIG more broadly or, for that matter, the Administrative Investigations Division within the Office of Investigations.

The Court considers the possibility that the term "component thereof" might limit the kinds of subdivisions within an agency that qualify for purposes of Section 552a(j) to only the largest units, such that VA OIG might qualify but the Office of Investigations might not. The Court, however, is unaware of any precedent supporting that reading of Section 552a(j)(2), and dictionaries define the word "component" broadly to mean "a constituent part," *Component*, Webster's Third New International Dictionary (1993). The D.C. Circuit, moreover, has indicated that individual prisons ***43** within the Bureau of Prisons system qualify as "component[s]" of a law enforcement agency for the purposes of Section 552a(j)(2), *Duffin v. Carlson*, 636 F.2d 709, 713 (D.C. Cir. 1980), which suggests that an office or department need not be the largest subdivision within the agency in order to qualify as a "component." Finally, the fact that the Office of Investigations was, at the relevant time, "composed of multiple headquarters offices/divisions and seven regional field offices staffed by more than 200 employees," Dkt. 49-5 at 2 (Johnson Decl. ¶ 4), belies any suggestion that it lacks sufficient gravity to constitute a "component" of the VA.

With respect to the *Office of Investigations*, the undisputed facts show that the "principal function" of the office is to "perform[ ] ... any activity pertaining to the enforcement of criminal laws." 5 U.S.C. § 552a(j)(2); *cf. Tijerina v. Walters*, 821 F.2d 789, 795 (D.C. Cir. 1987) ("[T]he [VA] OIG has a principal function of law enforcement."). Specifically, the Johnson Declaration establishes that (1) the Office of Investigations "investigates potential crimes and other violations of law involving VA programs and operations," Dkt. 49-5 at 2 (Johnson Decl. ¶ 4), and (2) that an overwhelming percentage of the investigators at the Office of Investigations—170 out of 200—were criminal investigators (OPM series 1811), versus seven to ten employees who were administrative investigators (OPM series 1810), *id.* at 2–3 (Johnson Decl. ¶ 4). The Johnson Declaration further establishes that, because VA OIG's investigation of Fleck

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involved an inquiry into whether Fleck "violated any criminal laws," the "records collected and created as part of this investigation, including the final report, are contained in a system of records (11VA51) that ... encompass information pertaining to criminal law enforcement-related activities because they were compiled for the purposes of investigating possible violations of federal criminal laws." *Id.* at 4 (Johnson Decl. ¶ 8). That system of records, in turn, has been exempted by rule from certain provisions of the Privacy Act, including, as relevant here, Section 552a(e)(5). *See* 38 C.F.R. § 1.582(b)(1); 73 Fed. Reg. 46713.

Fleck offers no evidence to the contrary. Rather, he points to evidence that administrative investigators within the Administrative Investigation Division ran his investigation and that OIG repeatedly referred to the inquiry as an "administrative investigation." *See* Dkt. 53-1 at 33–34 (Pl. SMF ¶¶ 159–65); Dkt. 58-1 at 54–56 (Def. Resp. to Pl. SMF ¶¶ 159–65). That evidence, however, is irrelevant to the inquiry under Section 552a(j)(2), which asks only (1) if the agency component that *maintains* the relevant system of records performs as its principal function activities pertaining to the enforcement of the criminal laws and (2) whether the record at issue was included in a system of records that consists of "information compiled for the purpose of a criminal investigation, including reports of informants and investigators." 5 U.S.C. § 552a(j)(2). As discussed, the component that maintained 11VA51 was the Office of Investigations, not the Administrative Investigation Division, and the undisputed evidence shows that 11VA51 consists of information pertaining to criminal law enforcement-related activities.

Thus, the Court concludes that the OIG report is part of a "system of records" that is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws" and which consists of "information compiled for the purpose of a criminal investigation." *Id.* Because the Secretary of Veterans Affairs has exempted 11VA51 from the requirements of Section 552a(e)(5), *see* ***44** 73 Fed. Reg. at 46717, the Court concludes that Fleck's claims based on violations of that section are barred by Section 552a(j)(2).

The VA's regulation also purports to exempt the agency from Section 552a(g), which includes both of Defendant's causes of action in this case. As the D.C. Circuit has explained, however, that exemption is unenforceable. *See Tijerina*, 821 F.2d at 795–96. Section 552a(g) is not a substantive provision; it is a grant of jurisdiction and waiver of sovereign immunity "directed not towards agencies but towards courts and aggrieved individuals." *Id.* "Although agencies may exempt *systems of records* from the Act, they may not exempt *themselves*." *Lugo*, 214 F. Supp. 3d at 39 (citing *Tijerina*, 821 F.2d at 795). Thus, "an agency has no power under the Act to exempt itself from the civil liability provisions of subsection (g)." *Tijerina*, 821 F.2d at 795; *Hurt v. Cromer*, No. 09-5224, 2010 WL 8753255, at *1 (D.C. Cir. June 11, 2010) (per curiam).

There is an exception to this rule, however, with respect to Section 552a(g)(1)(C). As this Court has previously held, "because the slight variation in wording between (e)(5) and (g)(1)(C) is 'of no substantive significance,' " a plaintiff has "no cause of action under subsection (g)(1)(C)" if his suit is based on a record that is exempt under subsection (e)(5). *Lugo*, 214 F. Supp. 3d at 39 (quoting *Doe v. United States*, 821 F.2d 694, 699 (D.C. Cir. 1987)). Accordingly, the Court will grant Defendant's motion for summary judgment with respect to Fleck's Section 552a(g)(1)(C) claims and those of Fleck's Section 552a(g)(1)(D) claims that are premised on violations of Section 552a(e)(5).

2. *Section 552a(e)(6) Exemption*

All is not lost for Fleck, however. Because Section 552a(j)(2) expressly prohibits an agency from exempting records from the requirements of Section 552a(e)(6), Fleck's Section 552a(g)(1)(D) claims predicated on alleged violations of Section 552a(e)(6) still remain. Defendant sees things differently. In its view, a second exemption bars liability with respect to Fleck's claims predicated Section 552a(e)(6). Specifically, it observes that Section 552a(e)(6)'s requirement that an agency make reasonable efforts to assure that records are accurate, complete, timely, and relevant prior to dissemination does not apply if "the dissemination is made pursuant to subsection (b)(2)" of the Privacy Act. Dkt. 49 at 13 (quoting 5 U.S.C. § 552a(e)(6)). Subsection (b)(2), in turn, refers to situations in which the "disclosure of [a] record would be ... required under section 552 of this title"—that is, the Freedom of Information Act. 5 U.S.C. § 552a(b)(2).

The parties agree that the dissemination of the OIG report at issue was not made pursuant to a FOIA request. Defendant insists, however, that the OIG report nevertheless falls within the FOIA exemption to Section 552a(e)(6). Its argument why takes some unpacking, but, in essence, Defendant suggests that the D.C. Circuit, in *Bartel v. FAA*, 725 F.2d 1403 (D.C. Cir. 1984), recognized some ambiguity in the text

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of Section 552a(b)(2), and, in so doing, left the door open for an agency "to invoke Section 552a(b)(2) when another source of mandatory disclosure (such as custom or another federal statute) *requires* the public disclosure of the record independent of FOIA." Dkt. 49 at 14–15 (citing *Bartel*, 725 F.2d at 1413). This interpretation of subsection (b)(2) comes from long-standing Office of Management and Budget guidelines, which Defendant maintains are entitled ***45** to deference. *Id.* at 15. And since OIG reports are required by statute to be disclosed publicly, *see* 38 U.S.C. § 312(c)(1)(C), Defendant submits that OIG reports should be treated as records that "would be ... disclosed" pursuant to FOIA for the purpose of Section 552a(e)(6). Dkt. 49 at 18.

In *Bartel*, the D.C. Circuit considered whether a disclosure was exempt from the Privacy Act because it "only imparted information that the [defendant] would have been required to release pursuant to a Freedom of Information Act ... request." 725 F.2d at 1411. The disclosure at issue in *Bartel* was not made in response to a FOIA request, but the defendant nonetheless argued that "[S]ection 552a(b)(2) ... allow[s] unrestricted disclosure [of information] unless the information falls within a FOIA exemption, whether or not the information has been requested." *Id.* at 1412. The D.C. Circuit began by observing that "the language of section 552a(b)(2) standing alone may be subject to different interpretations" with respect to whether the phrase "would be ... required under [FOIA]" refers to information that could, hypothetically, be released pursuant to a FOIA because it does not fall within a FOIA exemption, or whether it instead refers only to information that is actually released pursuant to a FOIA request. *Id.* The court of appeals ultimately determined, however, that subsection (b)(2) "must be read generally to preclude nonconsensual disclosure of Privacy Act material *unless the agency acts pursuant to a FOIA request.*" *Id.* (emphasis added).

The D.C. Circuit reached this conclusion by examining "the differing thrusts of the FOIA and the Privacy Act." *Id.* It explained that "FOIA was meant to limit agency discretion to deny public access to information in its files," while "[t]he Privacy Act, on the other hand, was designed to limit agency discretion to reveal personal information in its files." *Id.* And although the two statutes "undoubtedly ... overlap and even conflict" in some areas, the court reasoned that "neither statute was passed to increase agency discretion as to what to disclose or hold back," and thus "[i]t would be unreasonable to read ... FOIA, as appellees do, as *increasing agency discretion* to disclose information where disclosure is otherwise prohibited by the Privacy Act." *Id.* It follows, the court concluded, that "[o]nly when the agency is *faced with a FOIA request* for information that is not within a FOIA exemption, and therefore has no discretion but to disclose the information, does the FOIA [exemption] to the Privacy Act come into play." *Id.* (emphasis added).

Although the D.C. Circuit considered "this reasoning by itself" to be "persuasive," it also noted that the Privacy Act's legislative history [2] and the Office of Management and Budget's Guidelines on the Act ("OMB Guidelines"), *see* 40 Fed. Reg. 28949–78 (July 1, 1975), "supported" its view. In particular, the court pointed to the following language from the OMB Guidelines' discussion of subsection (b)(2), which states:

> Given the use of the term "required," agencies may not voluntarily make public any record which they are not required to release (i.e. those that they are permitted to withhold) without the consent of the individual ....
>
> ***46** Records which have traditionally been considered to be in the public domain and are required to be disclosed to the public, such as many final orders and opinions of quasi-judicial agencies, press releases, etc. may be released under this provision without waiting for a specific Freedom of Information Act request .... Records which the agency would elect to disclose (i.e., they are permitted to be withheld under the FOIA) may only be released to the public under the "routine use" provision.

Bartel, 725 F.2d at 1412–13 (quoting OMB Guidelines at 21–22, 40 Fed. Reg. at 28954). Although the D.C. Circuit cited this language as general support for its conclusion that subsection (b)(2)'s applies only when the agency is "required" to disclose information pursuant to a FOIA request, the court also observed that the OMB Guidelines "suggest a possible exception to this interpretation for information that is traditionally released by an agency to the public without a[ ] FOIA request." *Id.* at 1413. At the end of the day, however, the court concluded that it "need not decide whether such an exception is proper, or if so what its exact scope may be," because the disclosures in *Bartel* were not such disseminations. *Id.* [3]

Because VA OIG reports are "required to be disclosed to the public" by statute, 38 U.S.C. § 312(c)(1)(C), Defendant seizes on this last passage in *Bartel*'s discussion of the exemption to urge the Court to accord *Chevron* deference to the OMB's interpretation of subsection (b)(2) and recognize

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that the OIG report "may be released under [subsection (b)(2)] without waiting for a specific [Freedom of Information Act] request" and, therefore, is exempt from Section 552a(e)(6). Dkt. 49 at 16 (citing 40 Fed. Reg. 28954); *id.* at 15 (citing *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)); *see also Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1120 (D.C. Cir. 2007) ("Congress explicitly tasked the OMB with promulgating guidelines for implementing the Privacy Act, and we therefore give the OMB Guidelines 'the deference usually accorded interpretation of a statute by the agency charged with its administration.' ") (citation omitted) (quoting *Albright v. United States*, 631 F.2d 915, 920 n.5 (D.C. Cir. 1980)). The Court is unpersuaded for several reasons.

First, Congress might reasonably have opted to exempt documents from the Privacy Act that are traditionally considered to be part of the public domain or that are subject to mandatory disclosure under a different statutory scheme, that is not the statute that it enacted. Rather, Section 552a(e)(6) requires agencies to "make reasonable efforts to assure that ... records [about an individual] are accurate" before "disseminating" those records outside the government, "unless the dissemination is made *pursuant to subsection (b)(2)*"—and subsection (b)(2) references *only* FOIA and no other statute. Congress could have easily written Section 552a(e)(6) to exempt records disclosed pursuant to any other statutory mandate or even pursuant to Section 552a(b)(3), which concerns disclosures "for a routine use," but it did ***47** not do so; instead, it limited the exemption to the dissemination of records pursuant to FOIA. The Court cannot read into the Privacy Act what Congress did not place there, nor does *Chevron* deference permit an agency or the Court to disregard the plain terms of a statute. *See, e.g.*, *United States v. Mead Corp.*, 533 U.S. 218, 227, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001) ("[A] regulation is [not] binding in the courts [if it is] ... manifestly contrary to the statute."); *Scarborough v. Harvey*, 493 F. Supp. 2d 1, 13 n.28 (D.D.C. 2007) ("[T]o the extent that the OMB Guidelines ... contradict the plain language of the Privacy Act itself, they should be accorded no special interpretive weight.").

The limitation of Section 552a(b)(2)'s exemption to FOIA is a sensible one, moreover, because that exemption "represents a Congressional mandate that the Privacy Act not be used as a barrier to FOIA access." *Greentree v. U.S. Customs Serv.*, 674 F.2d 74, 79 (D.C. Cir. 1982). Public access to agency records pursuant to FOIA would be stymied if the agency always had to obtain the consent of an individual (as Section 552a(b) otherwise requires) before that individual's records could be released pursuant to a FOIA request.

Second, although *Bartel* noted that "the language of [S]ection 552a(b)(2) *standing alone* may be subject to different interpretations," 725 F.2d at 1412 (emphasis added), courts must exhaust all of the traditional rules of statutory interpretation before invoking *Chevron* deference, *see Chevron*, 467 U.S. at 843 n.9, 104 S.Ct. 2778, and *Bartel* goes on to hold—in the very next clause—that Section 552a(b)(2) "*must be read* generally to preclude nonconsensual disclosure of Privacy Act material unless the agency acts *pursuant to* a FOIA request," 725 F.2d at 1412 (emphases added). When subsection (b)(2) is read within the broader context of subsection (b), moreover, it becomes clear that the phrase "would be ... required under [FOIA]" refers only to disclosures made subject to an actual FOIA request, not disclosures that could be made under some hypothetical FOIA request. To illustrate, subsection (b) provides that "[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency," without the prior approval of the individual to whom the record pertains, "unless disclosure of the record would be"—"*to*" one of nine categories of recipients, 5 U.S.C. § 552a(b)(1), (4)–(10), (12) (emphasis added), "*for* a routine use," *id.* § 552a(b)(3) (emphasis added), "*pursuant* to the order of a court," *id.* § 552a(b)(11) (emphasis added), or "*required* under [FOIA]," *id.* § 552a(b)(2) (emphasis added). Because each of the surrounding provisions refers to actual—not hypothetical—disclosures, the same must apply to subsection (b)(2). *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 569–70, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995).

To be sure, *Bartel* declined to decide whether the OMB Guidelines' exception for information that is traditionally released to the public without a FOIA request is "proper." 725 F.2d at 1413. But the OMB Guidelines' interpretation of subsection (b)(2) cannot be reconciled with *Bartel*'s reasoning or the overall structure of Section 552a(b). In holding that "the [FOIA exemption] is only invoked when the agency acts pursuant to a FOIA request," *id.* at 1413 n.18, *Bartel* necessarily construed the phase "would be" to refer to actual, not hypothetical, disclosures under FOIA. And, as explained above, this conclusion is consistent with the surrounding provisions of Section 552a(b), all of which contemplate actual disclosures. Because, as a basic rule of statutory interpretation, the ***48** same statutory phrase cannot simultaneously hold two incompatible meanings, *see*

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Clark v. Martinez, 543 U.S. 371, 386, 125 S.Ct. 716, 160 L.Ed.2d 734 (2005), the phrase "would be" cannot refer to hypothetical FOIA disclosures when information is required to be or is traditionally released to the public, but actual disclosures in all other contexts.

Finally, the Court has no quarrel with the proposition that a specific mandatory-disclosure provision trumps a more general prohibition on disclosure like Section 552a(b) of the Privacy Act. *See Morton v. Mancari*, 417 U.S. 535, 550–51, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974). But, importantly, the claims in this case do not challenge the *release* of the OIG report but, rather, OIG's purported failure to ensure that the material contained in that report was accurate and complete "prior to disseminat[ion]," 5 U.S.C. § 552a(e)(6). Absent a specific provision that states otherwise, then, the fact that VA OIG reports must be publicly disclosed does not by itself absolve Defendant of the requirement to ensure that they are accurate and complete.

Accordingly, the Court concludes that the dissemination of the OIG report in this case was not "made pursuant to subsection (b)(2)," and thus, the report is not exempt from the requirements of Section 552a(e)(6).

B. Privacy Act Violations

Turning to the merits, Section 552a(g)(1)(D) permits a plaintiff to recover damages when an agency "fails to comply with any ... provision of [the Privacy Act], or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual." 5 U.S.C. § 552a(g)(1)(D). As discussed, although Fleck alleges violations of Section 552a(e)(5) and (e)(6), he may recover only for violations of Section 552a(e)(6), which provides that an agency shall, "prior to disseminating any record about an individual to any person other than an agency, ... make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes." *Id.* § 552a(e)(6).

Fleck argues that OIG's report violates Section 552a(e)(6) because it "contains numerous inaccurate statements of fact and omits exculpatory and mitigating evidence." Dkt. 56 at 15. These inaccuracies and omissions, Fleck claims, violated the prevailing professional standards for Office of Inspector General investigations and the VA OIG's own internal standards and, thus, "fell below any arguable standard of 'reasonableness.' " *Id.* The Court concludes that Fleck has adduced sufficient evidence to create a genuine dispute of material fact as to whether the report's omissions violated OIG's obligation to undertake "reasonable efforts" to ensure that its report was "accurate" and "complete." 5 U.S.C. § 552a(e)(6).

In support of his Privacy Act claims, Fleck submits an expert report from John Hartman, a former Deputy Inspector General with over 30 years' experience in three Offices of Inspector General in the federal government. Dkt. 56-2 at 2. Hartman analyzes VA OIG's conduct in Fleck's case according to professional standards issued by the Council of the Inspector General on Integrity and Efficiency ("CIGIE") and VA OIG's own internal guidelines, which incorporate the CIGIE standards. *Id.* at 3, 8–11. Based on these standards, Hartman identifies a number of "inconsistencies between the VA OIG's actions on this case and CIGIE's standards and the VA OIG's internal guidance," which, in his professional opinion, render the report "both inaccurate and incomplete in several material ways." Dkt. 56-2 at 12.

***49** First, Hartman observes that Deputy Secretary Bowman's second concurrence letter, which retracts his previous concurrence and "raises questions about the accuracy and completeness of the [r]eport, is not included with the public [r]eport, thus making the [r]eport incomplete and inaccurate." *Id.* at 13.

Second, Hartman finds fault with OIG's failure to solicit Fleck's comments on "all substantiated findings" near "the conclusion of the investigation," so that Fleck could respond with "potentially exculpatory or mitigating information," in violation of VA OIG Directive 51Q 101. *Id.* Hartman notes, in particular, that after Fleck was last interviewed, VA OIG completed "a number of additional investigative steps, including follow-up interviews with witnesses" and "requested, obtained, and reviewed telephone records." *Id.*

Third, Hartman opines that "[r]elevant and material information was not included in the VA OIG Report and in some instances, not obtained during the investigation." *Id.* According to Hartman, these omissions show that VA OIG "report[ed] on evidence sufficient to substantiate the allegations without attempting to present potentially exculpatory or contradictory evidence or information that adds relevant context to those findings." *Id.* In particular, Hartman points to eleven examples of (what he regards as) material omissions:

(1) Hartman faults the VA OIG for failing to interview Buonocore about the June 2016 call during which Wiercinski

was first suggested as a candidate, even though Fleck told OIG investigators during his interview that it was Buonocore who suggested his wife, and not he. *Id.* at 14. Buonocore later executed a declaration in which he explained that he first suggested Wiercinski as a candidate and that he did not recall Fleck ever recommending Wiercinski for the position, which contradicts the OIG report's finding that Fleck "actively and openly solicited" his wife's employment during that call. *Id.*

(2) Although the report concludes that Fleck "used his position as an SES manager ... to advocate for the employment of his wife," Hartman opines that the report omits material and relevant context that Fleck did not advocate for his wife while the Best Qualified Panel was reviewing candidates, including testimony from all three members of the Best Qualified Panel that they received no pressure to hire Wiercinski and that she was selected because she was far and away the most qualified candidate. *Id.* at 15–17.

(3) Hartman further criticizes the report for omitting important context about the testimony and origins of the e-discovery position. *Id.* at 17–18. Although the report concludes that Fleck "participated in establishing" the e-discovery position "for" his wife, Dkt. 49-3 at 20, Hartman observes that the OIG report omits testimony from Cameron Gore and Benjamin Diliberto that establishes that the need for an e-discovery position had been discussed at VA OGC before Fleck's arrival at OGC in May 2016. Dkt. 56-2 at 17–18.

(4) Hartman indicates that the OIG report does not address conflicting testimony regarding Fleck's apparent participation in conversations about converting a general staff attorney position in the Real Property Law Group to an e-discovery position. *Id.* at 18–19. Although the report quotes Cameron Gore's recollection that Fleck was involved in a collective discussion, Hartman observes that it omits testimony from others who did not remember Fleck having involvement and instead recalled a different individual making the decision to use the general attorney position in Real Property Law Group for an e-discovery position. *Id.* at 19.

***50** (5) Hartman opines that the report "does not fully address potentially material exculpatory information regarding Mr. Fleck's involvement in the position description or vacancy announcement." *Id.* at 19. Hartman acknowledges that the report "outlines various emails and discussions where Mr. Fleck was a participant," but he notes that the report "does not establish what impact, if any, he had on the document's content." *Id.* In addition, he observes that the report omits testimony from Cameron Gore, in which he states: "to suggest that [Fleck] created the [position description] and there was some way that he drafted it to steer it, um, that's, that's bogus. That's bogus." *Id.*

(6) Hartman also takes issue with the OIG report's conclusion that "[t]here is a direct connection between Mr. Fleck referring his wife to Mr. Gore, and Mr. Gore being influenced by that referral." Dkt. 49-3 at 20. In Hartman's view, this statement is misleading because Gore told OIG investigators that Fleck had no influence over the hiring decision. Dkt. 56-2 at 20. In particular, Gore stated during his interview: "I assure you, if Fleck had ever tried to influence me, and, and if he had—and, and I say this humbly, but I'm going to be honest with you. Bob Fleck does not have a bit of influence over me." Gore also told investigators: "if [Wiercinski] wasn't the best qualified, she wasn't going to get selected" and "the review process, the recruitment process, came through my section. [Fleck] had no say in that." *Id.* Nevertheless, Hartman explains, the OIG report omits this context, which "may have provided a more complete presentation of the facts about the entire hiring process and ... more completely and accurately characterize[d] his influence on the final hiring decision." *Id.* at 21.

(7) Although the report accurately describes Wiercinski as the e-discovery coordinator attorney assigned to support the Contract Litigation Team, which Fleck managed, Hartman criticizes the report for omitting testimony that, because Wiercinski was a member of the Real Property Law Group and not the Procurement Law Group, Wiercinski did not report to Fleck, and Fleck did not control her "assignments [or] feedback." *Id.* at 21–22. The exclusion of this evidence, Hartman opines, means that the report provides incomplete context regarding whether "Mr. Fleck actually had any role in assigning work to Ms. Wiercinski or influencing her appraisal —not just a potential role." *Id.* at 23.

(8) Hartman contends that report "does not contain sufficient evidence" to support the conclusion that Fleck and Wiercinski made "false statements about when [Wiercinski] was selected for the e-Discovery position to lessen the potential consequences" of sharing VA sensitive data and that those statements were "not simple lapses in memory or confusion regarding dates." *Id.* at 23.

(9) Hartman asserts that the report also provides incomplete information about the ethics trainings that Fleck received. *Id.* at 23. Although the report accurately states that Fleck, Gore,

and Hipolit received ethics training regarding the hiring of relatives, Hartman notes that the report fails to mention that the training occurred on September 23, 2016, which was *after* Fleck's alleged advocacy of Wiercinski. *Id.*

(10) Hartman also criticizes the report's failure to provide additional detail regarding the call log analysis that OIG undertook to verify Fleck's and Wiercinski's claim that Gore informally offered her the position in mid to late September 2016. Hartman points out that, during the month of September, Wiercinski received several calls from numbers listed as "Unavailable." ***51** *Id.* at 24. The report, however, does not mention the unavailable calls nor does it identify what steps, if any, investigators took to determine if these may have been from Gore. *Id.*

(11) Finally, Hartman faults VA OIG for insufficiently informing VA ethics officials about the results of its investigation and the allegations of ethical misconduct against Fleck. Although VA OIG communicated with ethics officials to determine if anyone had sought contemporaneous ethics advice regarding the Fleck/Wiercinski situation, Hartman observes that it is unclear whether VA OIG informed those officials about the results of the investigation or sought their advice about whether Fleck's actions amounted to "advocacy." *Id.* at 24–25.

For its part, Defendant does not contest the factual bases for Hartman's opinions—that is, it does not contest that the identified evidence was, in fact, omitted from OIG's report. *See* Dkt. 49 at 28. Rather, it insists that the omissions were reasonable, immaterial, and would not alter the ultimate factual findings and conclusions in the report. *Id.*

Upon consideration of the Hartman report and the evidence in the record, the Court concludes that Defendant is entitled to summary judgment with respect to two of the potential violations that Hartman identifies. First, although it is true that Defendant has not updated the public version of its report to replace VA Deputy Secretary Bowman's concurrence letter to reflect his disagreement with all of the report's conclusions except the finding on sharing sensitive information, that omission is not cognizable under Section 552a(e)(6). To be sure, the absence of the VA Deputy Secretary's second letter renders OIG's report highly misleading, since it suggests, inaccurately, that VA management still concurs in full with the report's findings. The problem for Fleck, however, is that Section 552a(e)(6) obligates an agency to undertake reasonable efforts to ensure that a record is complete and accurate only "prior to disseminat[ion]," and, here, the VA Deputy Secretary rescinded his concurrence after the publication of the report. Fleck does not point the Court to any authority establishing that Section 552a(e)(6) imposed an obligation on Defendant to update the report. Accordingly, the Court will grant summary judgment in Defendant's favor with respect to that claim.

The Court also concludes that there is no genuine dispute of material fact that Defendant undertook "reasonable efforts" to ensure the accuracy of the report's conclusion that Fleck and Wiercinski made false statements regarding the timing of her offer.[4] "It is well-established that, 'generally speaking, the Privacy Act allows for correction of facts but not correction of opinions or judgments.' " *Mueller v. Winter*, 485 F.3d 1191, 1197 (D.C. Cir. 2007) (quoting *McCready v. Nicholson*, 465 F.3d 1, 19 (D.C. Cir. 2006)). Thus, in order to be actionable, "a subjective judgment" must be " 'based on a demonstrably false' factual premise." *Mueller*, 485 F.3d at 1197 (quoting *White v. Off. of Pers. Mgmt.*, 787 F.2d 660, 662 (D.C. Cir. 1986)). Although Hartman contends that the report "does not contain sufficient evidence" to support its conclusion that Fleck and Wiercinski gave false statements, Dkt. 53-3 at 23, the undisputed facts in the record establish otherwise. Specifically, the report details how the investigators interviewed ***52** Gore, who did not recall the timing of his communications with Wiercinski but that he would not have made a call until after he received a recommendation from the hiring panel. Dkt. 49-3 at 18–19 (OIG report); *see also* Dkt. 58-4 at 2–3 (Gore Tr. at 63–65, 67–68). The report then explains that OIG analyzed Gore's, Wiercinski's, and Fleck's telephone records, which revealed no calls from Gore to Wiercinski until after October 4, 2016. Dkt. 49-3 at 19 (OIG report). This finding was also consistent with the email record, which indicated that Gore did not notify Wiercinski that she had been received the position until an hour after he received the Best Qualified Panel's recommendation. *Id.* at 33. Fleck faults OIG for "conduct[ing] no additional investigation into the 18 calls" to or from "unavailable" numbers on Wiercinski's phone during that period, Dkt. 53 at 10, but he does not identify any additional steps that Defendant could have taken to identify these numbers, nor does he offer evidence to suggest, in the event that Gore called from a different VA phone, that such a call would appear as "unavailable" when calls from Gore's VA office phone were identifiable, Dkt. 58 at 13. In light of this undisputed evidence, the Court concludes that no reasonable jury could find that Defendant failed to "make reasonable

efforts" to investigate Fleck's and Wiercinski's claim that Gore had informally offered the position in September.

With respect to the remaining omissions and inaccuracies Hartman identifies, however, the Court concludes that a genuine dispute of material fact exists as to whether OIG violated Section 552a(e)(6). To the extent that Defendant asserts that these omissions were reasonable, Hartman disagrees, and his expert report cites to specific provisions of the professional and internal standards governing OIG investigations that each omission ostensibly violated. Dkt. 53-3 at 12–25. That disagreement is sufficient to create a material fact dispute as to whether Defendant's efforts to assure the report's completeness and accuracy were reasonable.

As discussed, Defendant also argues that the omitted evidence was immaterial or would not have altered the report's conclusions, but in doing so it misapprehends the standard for a violation under Section 552a(e)(6). Section 552a(e)(6) requires an agency to assure that a record is "accurate" and "complete." Even if additional evidence would not alter a report's bottom line, it might nevertheless provide important context that bears on the subject's level of culpability and cast the report's conclusions in a different light. That is precisely what Fleck says happened here. Thus, viewed in the light most favorable to Fleck, the Court concludes that there is sufficient evidence in the record from which to conclude that the report was incomplete or inaccurate.

C. Intent or Willfulness

Defendant further contends that, even if Fleck can establish a violation of the Privacy Act, the Court should nevertheless grant summary judgment in Defendant's favor because Fleck has not adduced any evidence that it violated Section 552a(e)(6) intentionally or willfully. The Court is unpersuaded.

As Defendant correctly observes, a plaintiff cannot recover damages under the Privacy Act unless he shows that the agency "acted in a manner which was intentional or willful." 5 U.S.C. § 552a(g)(4). The intentional-or-willful standard "does not require the [defendant] to set out purposely to violate the [Privacy] Act." *Tijerina v. Walters*, 821 F.2d 789, 799 (D.C. Cir. 1987). But the plaintiff must prove that the agency's actions were (1) ***53** "so patently egregious and unlawful that anyone undertaking the conduct should have known it unlawful," (2) "somewhat greater than gross negligence," (3) "committed without grounds for believing [them] to be lawful," or (4) "[in] flagrant[ ] disregard [of] others' rights under the Act." *Maydak v. United States*, 630 F.3d 166, 180 (D.C. Cir. 2010) (emphasis and quotation marks omitted). For present purposes, so long "as there is ... a genuine issue of material fact as to whether [the defendant] acted with something greater than gross negligence ..., the issue cannot be disposed of on summary judgment." *Tijerina*, 821 F.2d at 799.

At this stage, Fleck has adduced sufficient evidence of intent or willfulness to survive a motion for summary judgment. Fleck's theory is that Defendant pursued its investigation only with an eye toward substantiating the allegations against him rather than providing a complete account of his culpability. *See* Dkt. 53 at 28. This theory finds some support in Defendant's failure to interview Buonocore, even after Fleck informed OIG that Buonocore would have exculpatory information concerning Fleck's role in the hiring of his wife, and in OIG's failure to offer a satisfactory explanation for why it did not do so. Defendant attempts to defend this omission by explaining that Buonocore had retired by the time of the investigation (which meant that OIG could not compel his testimony), *see* Dkt. 58-1 at 43 (Def. Resp. to Pl. SMF ¶ 116), but Defendant offers no contemporaneous evidence to explain why OIG investigators did not ask him to testify voluntarily.

Similarly, Defendant does not satisfactorily explain why it excluded Diliberto's testimony from the report, even though Diliberto's testimony suggests that Fleck's role in the creation of the e-discovery position and the hiring process was less significant than the report made it out to be. Defendant defends its actions by explaining that the report was only focused on the narrow question of "advocacy" and the testimony of Diliberto and others was irrelevant to that specific question. Dkt. 49 at 33. What that argument misses, however, is that Section 552a(e)(6) required Defendant to ensure not only that the information in the report was relevant but also that it was *complete*. To appreciate the importance of completeness in operation, one need look no further than VA Deputy Secretary Bowman's decision to retract his concurrence, after reviewing Buonocore's and Diliberto's excluded testimony.

Finally, Fleck has also adduced direct evidence that arguably casts doubt on the objectivity of OIG's approach. Specifically, he points to an email sent by an OIG employee, who, upon realizing that the report at one point erroneously used the word "indict" instead of "indicate," joked that the error was a "Freudian" slip, thereby suggesting that OIG had pursued

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its investigation with an indictment as a goal. Dkt. 58-1 at 29 (Def. Resp. to Pl. SMF ¶ 81).

Put together, the Court concludes that this evidence creates a genuine issue of material fact as to whether Defendant acted "with something greater than gross negligence" with respect to its obligation to assure the completeness of its report, and, thus, the Court declines to grant Defendant's motion for summary judgment on that ground.

D. Causation and Actual Damages

That brings the Court to the final elements of a Privacy Act claim: that a violation of the Act proximately caused Fleck actual damages. *Dickson*, 828 F.2d at 37. "To make out a damages claim, the alleged adverse [effects] must result from the inaccuracy of the record[ ], not the ***54** mere existence of the record[ ]." *Thompson v. Dep't of State*, 400 F. Supp. 2d 1, 19 (D.D.C. 2005).

Fleck identifies six "adverse effects" that he claims he suffered because of Defendant's public dissemination of the allegedly inaccurate and incomplete report.[5] Dkt. 56 at 31. First, he argues that the report caused his proposed demotion, and, although that demotion ultimately did not occur, Fleck says that it had a "quantifiable *adverse effect* on [him] because he had to pay thousands of dollars to counsel to challenge the proposed discipline." *Id.* Second, Fleck maintains that the report "caused [him] pecuniary harm when he was rejected for multiple private sector jobs after the publication of the report." *Id.* at 32. Third, he claims that the report caused him to be denied a promotion to OGC Deputy General Counsel in November 2017 because "it is possible that someone within OGC knew about the OIG's decision to substantiate the allegations before November 2017." *Id.* at 34. Fourth, Fleck asserts that the report caused him to be "rejected for a job with the Department of Defense in April 2018." *Id.* at 35. Fifth, he contends that the report caused "adverse effects on his health that then caused increased health care costs." *Id.* at 36. And sixth, he argues that he "suffered adverse effects from the [r]eport when VA employees used the [r]eport as a basis for other whistleblower allegations against him," thereby causing him to "incur[ ] legal fees to defend (successfully) against them." *Id.*

Although causation is ordinarily a question of fact for the jury, summary judgment is appropriate when the plaintiff "fail[s] to proffer any evidence ... from which a reasonable jury could find the required causal link" between the agency's Privacy Act violation and actual damages the plaintiff has suffered. *Williams v. Johnson*, 701 F. Supp. 2d 1, 17 (D.D.C. 2010). Here, the Court concludes that—with one exception—Fleck has not adduced sufficient evidence to create a genuine dispute of material fact as to whether the inaccuracies or any incompleteness in the OIG report proximately caused the adverse effects he identifies, and, thus, the Court will grant Defendant's motion for summary judgment with respect to those claims.

Fleck's claim that the report caused his rejection for multiple private sector jobs fails for two reasons: first, he has not adduced sufficient evidence to permit a reasonable jury to find that anyone at the companies to which he applied was aware of the report, and, second, he has not created a genuine dispute of material fact as to whether he would have been selected for any of the positions but for the inaccuracies in the report. With respect to the first point, Fleck proffers an expert report from Deb Cohen, an executive hiring professional, who opines that "[i]nternet searches of executive candidates are highly likely;" that "[n]egative information about candidates found in internet searches has a detrimental effect on the decision whether to interview or hire those candidates;" and that a "search of Mr. Fleck and Veterans Affairs" on popular search engines reveals the OIG report. Dkt. 53-5 at 19 (Cohen Rep.). As Defendant points out, however, Fleck did not receive an interview invitation for any of these positions, and Cohen does not offer an opinion as to *when* in the hiring process ***55** such a search is likely to occur or whether employers are likely to conduct an internet search of candidates as part of deciding whom to interview. Dkt. 49-10 at 13–15 (Cohen Dep. at 131–32, 141). Fleck, moreover, has adduced no evidence from the companies to which he applied about their hiring processes or about Fleck's application. In any event, even if Fleck were able to raise an inference that one or more of the private-sector companies he applied to was aware of the OIG report, Fleck has proffered no evidence to suggest that he might have been selected for the positions but for the inaccuracies in the report. Fleck did not receive an interview for any of the positions, was never told why, and did not explore that question in discovery. Nor has Fleck offered any evidence that he would have been among the best qualified candidates for the position: he does not identify who was eventually selected for each position or produce evidence of those selectees' qualifications. Fleck asserts that he was "qualified" for the positions, Dkt. 53-1 at 28 (Pl. SMF ¶ 124), but notably does not argue that he was among the best qualified candidates.

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Fleck similarly fails to create a genuine dispute that the OIG report caused his non-selection for the Department of Defense position. Fleck argues that the timing of his rejection from the position, coming just a day after his interview and only a few days after the OIG report's publication, allows the reasonable inference that the report played a role in his non-selection. Undisputed evidence in the record, however, establishes otherwise. With its motion, Defendant includes a declaration from Paul Koffsky, one of the two officials involved in the hiring process for the Department of Defense position. Dkt. 49-4 (Koffsky Decl.). In his declaration, Koffsky explains that both he and the other hiring official "agreed" that the individual who was ultimately selected for the position was "the best qualified candidate;" details the reasons why they reached that conclusion; states that he "did not consider Mr. Fleck's qualifications [to be] comparable" to that individual's; and attests that he has "no recollection of being aware at the time that Mr. Fleck was the subject of an [OIG] investigation or that an OIG report had been issued regarding him, nor ... of that being a topic" in conversations about Fleck's candidacy. Dkt. 49-4 at 1–2 (Koffsky Decl. ¶¶ 4–6). Because Fleck offers no evidence to rebut these statements—including undisputed evidence that Fleck was not the best qualified candidate—he cannot establish that the OIG report caused his non-selection, and therefore that claim fails.

Fleck also does not proffer sufficient evidence to sustain his claim that a disclosure of the initial draft of the OIG report caused him to be denied a promotion to OGC Deputy General Counsel in November 2017. This claim fails for a simple reason: Fleck offers no evidence that Defendant had disclosed any of the findings or results of the draft OIG report to one of the decisionmakers by the time his non-selection decision was made. Fleck points to the fact that OIG's draft report was completed on November 17, 2017—the same day that General Counsel Byrne announced that Mitrano had been selected for the position—as evidence that Bryne and the members of the interview panel *might* have seen a copy of the draft report. Dkt. 53-1 at 29–30 (Pl. SMF ¶ 135–36). That assertion, however, is purely speculative and, moreover, is undermined by Fleck's own testimony that he was told on November 15 or 16 that he would not be selected for the position. Dkt. 49-9 at 43 (Fleck Dep. at 98).

Fleck also indicates that certain members of the interview panel knew or may ***56** have known about the *existence* of the OIG *investigation* at the time of his interview—either because they had been interviewed by investigators or because they had learned about it in the regular course of their duties at OGC. Dkt. 56 at 35; Dkt. 49-7 at 3 (Hogan Aff. ¶ 9); Dkt. 56-1 at 29–30 (Pl. Sealed SMF ¶ 136). Mere knowledge of an ongoing investigation, however, is not a Privacy Act violation. Rather, Fleck must produce evidence that an inaccurate or incomplete *record*—that is, the draft OIG report—was disclosed to members of his hiring panel prior to November 17, 2017, and that the disclosure of that flawed record caused his non-selection for the Deputy General Counsel position. *Thompson*, 400 F. Supp. 2d at 19. On this score, Fleck falls short. Fleck also maintains that two hearsay statements that Bryne and Meghan Flanz made months after the non-selection decision suggest that they knew about the report's findings before the report was published. Dkt. 56 at 34–35. But those statements do not establish that Defendant disclosed a draft report, or even any of the report's findings, to Byrne or Flanz prematurely in November 2017. Fleck's assertion that Bryne and Flanz received a premature disclosure of the report is pure speculation. In any event, Defendant also produces unrebutted declarations by two of the members of the interview panel—Flanz and Michael Hogan—that detail why Mitrano was the best qualified candidate for the position and explain that Fleck was not considered one the top candidates for the position based purely on his responses to the interview questions and his prior job experience. Dkt. 49-6 at 2–3 (Flanz Decl. ¶¶ 6–9); Dkt. 49-7 at 2–3 (Hogan Decl. ¶¶ 6–9). Fleck does not proffer any evidence to the contrary, nor does he assert that he was a better-qualified candidate than Mitrano. [6]

Fleck has also failed to proffer sufficient evidence to permit a reasonable jury to find a causal link between any inaccuracies in the OIG report and the legal fees he incurred to defend against whistleblower allegations that Fleck improperly hired three former colleagues from the Department of the Army into VA positions. In support of his theory of causation, Fleck explains that the whistleblower submitted a court filing in separate litigation she has with Fleck in which she allegedly cites the OIG report "as support for her claim that ... Fleck had improperly hired these three individuals." Dkt. 56-1 at 31–32 (Pl. Sealed SMF ¶ 149). Fleck explains, however, that he has not filed a copy of that court filing in this case—even under seal—"out of an abundance of caution given the whistleblower complaint." *Id.* Unfortunately, Fleck's failure to provide any record evidence to support his theory means that, as things stand, there is no genuine dispute of material fact with respect to the OIG report's causal connection with the whistleblower complaint. The Court must therefore grant Defendant's motion for summary judgment with respect to this claim. If Fleck is able to submit evidence to the Court

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(even if under seal) that establishes causation in support of his whistleblower claim, however, he may promptly seek reconsideration on that ground.

The Court will also grant summary judgment to Defendant with respect to Fleck's allegation that his medical condition worsened due to the OIG report for two reasons. First, Fleck does not explain how any of the deficiencies that he identifies in the report—as opposed to the OIG ***57** investigation and the release of the report more generally—caused any alleged deterioration in his health. Second, Fleck does not produce any expert medical opinion testimony with respect to causation. *See Daniels v. District of Columbia*, 15 F. Supp. 3d 62, 73 (D.D.C. 2014). Although Fleck offers testimony from his healthcare provider, Mary Elizabeth Alder, a nurse practitioner, Alder concedes that she is not an expert, and Fleck has not proffered her as one. Dkt. 72 at 3–4 (Alder Dep. at 14–15). Moreover, even if she were competent to offer a medical opinion as to causation, Alder admits that she would not be able to do so in this case because Fleck's medical records do not offer a pre-OIG report baseline that would allow for such an analysis. Dkt. 72 at 31–32 (Alder Dep. at 57, 62). Since the absence of any medical expert testimony would leave the trier of fact "to speculate as to [the] cause or causes" of the alleged deterioration of Fleck's health, *Halcomb v. Woods*, 610 F. Supp. 2d 77, 86 (D.D.C. 2009), the Court will grant Defendant's motion for summary judgment with respect to any adverse health effects Fleck may have suffered.

That leaves Fleck's claim that deficiencies in the OIG report caused him to incur legal fees to defend against his proposed demotion. With respect to this claim, the Court concludes that a genuine dispute of material fact exists as to whether any deficiencies in the OIG report proximately caused Fleck actual damages, and thus the Court will deny Defendant's motion for summary judgment.

Legal fees that a plaintiff incurs to protect against the effects of an agency's Privacy Act violations are cognizable damages under Section 552a(g)(4). *In re U.S. Off. of Personnel Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 62 (D.C. Cir. 2019). Defendant nevertheless maintains that the fees Fleck paid his lawyer to defend against his proposed demotion are not cognizable here for three reasons: First, Defendant claims that, because the Court has already held that a "proposed demotion" is not an actionable adverse determination, it should follow that any legal fees arising from the proposed demotion should not be actionable. Dkt. 49 at 44. Second, Defendant contends that the proposed demotion is not attributable to any deficiency in the OIG report because Mitrano—the proposing official—based her proposal on an independent review of the investigative file and on aspects of Fleck's conduct that are not in dispute. Dkt. 58 at 23–25. And, third, it argues that Mitrano's proposal was an independent decision by a third-party actor that breaks the chain of causation. Dkt. 58 at 25. None of these arguments is persuasive.

First, Defendant misreads the Court's previous opinion in this case. There, the Court held only that a proposed demotion could not qualify as an *adverse determination* for the purposes of Section 552a(g)(1)(C). Dkt. 21 at 12–13. It did not conclude, however, that a proposed demotion or, for that matter, any efforts undertaken to challenge a proposed demotion could not qualify as adverse *effects* for the purposes of Section 552a(g)(1)(D), and Defendant has not pointed the Court to any support for such a rule. The Supreme Court, moreover, has interpreted Section 552a(g)(1)(D)'s reference to "adverse effect" as "a term of art identifying a potential plaintiff who satisfies the injury-in-fact and causation requirements of Article III standing, and who may consequently bring a civil action without suffering dismissal for want of standing to sue." *Doe v. Chao*, 540 U.S. 614, 624, 124 S.Ct. 1204, 157 L.Ed.2d 1122 (2004). Because the efforts Fleck undertook to respond to the proposed demotion —including paying and retaining counsel—constitute ***58** a sufficient injury for the purposes of Article III standing, this argument fails, and, indeed, Defendant abandons it in its reply brief.

With respect to Defendant's second argument, the Court concludes that a genuine dispute of material fact exists as to whether the proposed demotion is traceable to any alleged deficiencies in OIG's report. Although Mitrano's letter proposing Fleck's demotion does not cite to any specific findings in the OIG report, a reasonable juror could infer that Mitrano reviewed the report in addition to the investigative file and that the findings in the report likely influenced her proposal. Fleck's theory, moreover, is that the report violated the Privacy Act because it did not cite to evidence that significantly lessened his culpability. Those omissions are significant because Defendant only sent VA officials copies of the evidence and interview transcripts that it cited in its report. Thus, even if Mitrano solely reviewed the investigative file and reached her own judgments, she did not receive Diliberto's interview transcript or any testimony from Buonocore, whom VA OIG did not interview. Nor

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is Defendant's argument that Mitrano would have proposed a demotion anyway availing. The fact that, after receiving Buonocore's and Diliberto's testimony, General Counsel Byrne declined to issue Mitrano's proposed demotion and that VA Deputy Secretary Bowman rescinded his concurrence at least creates a dispute of material fact as to whether Mitrano might not have proposed a demotion in the first place.

Finally, VA OIG's argument that Mitrano's independent decision breaks the chain of causation misses the mark. Although independent action by a third party can sometimes negate the proximate causality of a defendant's actions, that is true only when the third party's action is unforeseeable to the defendant. *See Coombs v. Islamic Republic of Iran*, No. 19-3363, 2022 WL 715189, at *19 (D.D.C. March 10, 2022). Here, Mitrano's proposed demotion was certainly foreseeable to Defendant, if for no other reason than the fact that the OIG report itself recommends that the OGC management confer about the appropriate administrative action to take against Fleck. Dkt. 49-3 at 21.

In sum, because Fleck has adduced sufficient evidence to permit a reasonable trier of fact to conclude that a violation of Section 552a(e)(6) caused him to incur legal fees to challenge his proposed demotion, the Court will deny Defendant's motion for summary judgment with respect to that claim.

CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment, Dkt. 49, is hereby **GRANTED** in part and **DENIED** in part, and Plaintiff's motion to strike and for sanctions, Dkt. 52, is **DENIED**.

SO ORDERED.

All Citations

596 F.Supp.3d 24

Footnotes

1 The VA OIG styles its motion as a "Motion to Dismiss Amended Complaint and, Alternatively, for Summary Judgment," Dkt. 49 at 1, but it does not clearly delineate which of its arguments support dismissal versus summary judgment. In light of this ambiguity and because the resolution of Defendant's motion requires the Court to reach beyond the allegations in the complaint by examining the record created during discovery, the Court will resolve Defendant's motion according to the summary-judgment standard of Rule 56. *See* Fed. R. Civ. P. 12(d).

2 With respect to the Privacy Act's legislative history, the Court observed that early versions of the bill exempted an agency from the Act's disclosure requirements "when disclosure would be required *or permitted* pursuant to ... the Freedom of Information Act," but "the final compromise version of the Act ... limited [the FOIA exemption] to those disclosures *required*, and not to all those *permitted,* under the FOIA." *Bartel*, 725 F.2d at 1413.

3 In its memorandum in support of dismissal, Defendant cites to two cases from this district that apply the interpretation of subsection (b)(2) set forth in the OMB Guidelines on the theory that *Bartel* "recognized [an] exception to th[e] general rule [requiring a FOIA request] for information traditionally released to the public without ... a [FOIA] request." *Tripp v. Dep't of Defense*, 193 F. Supp. 2d 229, 236 (D.D.C. 2002); *accord Chang v. Dep't of Navy*, 314 F. Supp. 2d 35, 42 (D.D.C. 2004). Neither decision, however, considers the next line of *Bartel*, in which the D.C. Circuit asserts that it is "not decid[ing] whether such an exception is proper." 725 F.2d at 1413.

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4 This does not constitute a finding that the conclusion was (or was not) correct, but only that the agency's failure to undertake further efforts to ensure the conclusion's accuracy does not amount to a violation of the Privacy Act. *See* 5 U.S.C. § 552a(e)(6).

5 Fleck refers to two of his theories for actual damages as "adverse determinations," in reference to the standard under Section 552a(g)(1)(C). However, because those adverse determinations could easily be characterized as "adverse effects," the Court will treat them as such for the purpose of assessing Fleck's claim under Section 552a(g)(1)(D).

6 Because the Court concludes that Fleck has not adduced sufficient facts to support his claim arising out of his November 2017 non-promotion, the Court need not consider whether that claim is timely. *See* Dkt. 49 at 50–53; Dkt. 53 at 46–50.

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MEMORANDUM FOR THE RECORD
From: SVAC Majority Staff
Date: September 24, 2026
Re: Senate Confirmation Process Precedent

SVAC

Mr. James L. Quinn was nominated to be Judge, United States Court of Appeals for Veterans Claims (CAVC) on September 14, 2026. The position that Mr. Quinn is nominated for is currently filled by Judge Coral Pietsch, whose term expires June 24, 2027.

There is precedent for the President nominating and the Senate confirming nominees to full term positions scheduled to begin the next Congress.

The Congressional Research Service provided the following table of precedent:

Name	Position	Nomination date (Congress)	Confirmation date	Date term was set to begin (Congress)
Julie D. Belaga	Member, Export-Import Bank of the United States Board of Directors (4-year term)	05/19/94 (103rd)	9/14/1994	01/20/95 (104th)
Harold J. Creel, Jr.	Federal Maritime Commissioner (5-year term)	10/07/98 (105th)	10/21/1998	06/30/99 (106th)
Sheila C. Bair	Member, Federal Deposit Insurance Corporation Board of Directors (6-year term)	05/02/06 (109th)	6/15/2006	07/15/07 (110th)
Elizabeth Dougherty	Member, National Mediation Board (3-year term)	11/14/06 (109th)	12/9/2006	07/01/07 (110th)
Peter A. Feldman	Commissioner, Consumer Product Safety Commission (7-year term)	06/07/18 (115th)	9/26/2018	10/27/19 (116th)

Nomination Material for

JAMES L. QUINN

Prepared Statement of James L. Quinn
Nominee to be a Judge of the United States Court of Appeals for Veterans Claims
September 23, 2026

Chairman Moran, Ranking Member Blumenthal, and distinguished Members of this Committee, thank you for the opportunity to appear before you today. I want to thank the President for nominating me to be a Judge on the Court of Appeals for Veterans Claims.

First, I want to acknowledge several people who have guided and supported me throughout my career. With me here today is my wife, Shannon, who is a caring and selfless educator in the Arlington Public School System and our two amazing children who got to have the afternoon off from school today. I love you very much. I also want to thank my parents, Patrick and Gail, who taught me to have a sense of public service and how important it is to extend a helping hand to those that need it. I also want to recognize my siblings whom I love and never get enough time to be in their company - Frank, Claire, Daniel, Spencer and Ashton. I also want to mention my in-laws, Glenda and Jules, who are both veterans and have supported me through the years even when I took their daughter from Louisiana to Washington D.C.

Finally, I would like to thank my home state senators. I especially want to thank Senator Cassidy who introduced me today. He took a chance on me and gave me the opportunity to work in Congress so that we could try to make our state and country a better place. I will always be grateful. Senator John Kennedy graciously sent a letter of support on my behalf, thank you Senator.

During my 17-year career as a Congressional staffer I have had the privilege of working on Veterans issues. I have had the honor of supervising a casework team that has handled thousands of constituent claims for benefits. This has taught me the how the VA claims process works - from the initial filing for benefits, the choices the veteran has to make through the modern AMA system and most importantly how a veteran feels when they believe they are not being treated fairly by a system that was designed to help them. The VA process can be daunting to someone who is unfamiliar with its internal procedures, but with patience and understanding I believe I have made a difference in veterans lives by learning the system myself. There is no better feeling as a staffer then when you hear that a veteran was granted the benefits they earned.

I have also seen firsthand the laws that Congress has passed to transform the way the VA handles claims. The passing of the AMA in 2017 and its implementation in 2019 has resulted in veterans getting a better chance at resolving their claims quicker and more accurately. The PACT Act has dramatically expanded the pathways for veterans to receive their benefits. I have had a front row seat in seeing bills pass the Veterans Affairs Committee for the last 12 years and in doing so, have unique and valuable knowledge on how Congress intended for these bills to be implemented.

These experiences have provided me with a strong foundation that I believe would allow me to quickly adapt to the Court. If confirmed, I promise to do the work diligently, impartially, and with a sense of fairness to all that I would encounter. Veterans and their families deserve judges that will go to work everyday trying to hear cases timely and accurately. If confirmed, I intend to honor their sacrifice by being the best judge I can be.

I would be happy to answer any questions you may have.

Pre-Hearing Questions for James Quinn
Nominee to be a Judge of the
United States Court of Appeals for Veterans Claims
from Senator Jerry Moran
Chairman, Senate Committee on Veterans' Affairs

September 15, 2026

1. Please detail the professional and personal experiences that you believe prepared you to serve as a Judge of the United States Court of Appeals for Veterans Claims (CAVC).

RESPONSE: For almost 18 years I have served as a senior staffer in the United States Congress, almost three terms in the U.S. House and two terms in the U.S. Senate. In this capacity I have helped oversee thousands of VA cases from constituents that needed help. In addition, I have supervised and helped introduce various pieces of VA related legislation, some of which directly affect the types of cases the Court of Appeals for Veterans Claims will adjudicate. These experiences have prepared me to analyze statutes, see the changes recent legislation has had, and gain an understanding of the process that a veteran undergoes. All of which will enable me to be a good judge on the CAVC.

2. What is the appropriate role of CAVC in making certain that the Department of Veterans Affairs (VA) provides veterans, caregivers, survivors, and other claimants the benefits and services Congress has authorized, while remaining an impartial appellate court rather than a policymaking body?

RESPONSE: The CAVC has a duty and an obligation to fairly interpret the statutes passed by Congress to ensure that the claimants are getting the benefits they deserve. Congress specifically created the Court to act as an independent body outside of the VA system to ensure that one party was not unduly favored over the other.

3. Please describe your understanding of the purpose, jurisdiction, statutory responsibilities, and organizational structure of CAVC, including the Court's place between the Board of Veterans' Appeals and the United States Court of Appeals for the Federal Circuit. If confirmed, how would you contribute to the effective administration of the Court?

RESPONSE: The purpose of the Court is to act as an independent judicial forum to resolve disputes between the veteran/claimant and the VA. Its jurisdiction is to review the cases that have gone through the VA system and have been appealed from the VA Board of Appeals. The structure of the Court is a statutorily defined number of judges that serve 15-year terms, must be based in the Washington D.C. area and are available to timely hear cases as they are appealed to the CAVC. A party has a right to appeal a decision to the Federal Circuit if they feel the CAVC did not decide a case correctly (and ultimately to the U.S. Supreme Court). If confirmed, I will carry out the functions of the Court with integrity, promise to review cases fairly and in a timely manner, and make sure that the CAVC is functioning how Congress intended.

4. What do you see as the role of this Committee, specifically, and congressional oversight, in general, with respect to CAVC?

RESPONSE: I have great respect for the function of Congressional Committees and their constitutional duty to provide oversight and accountability for the American public. The CAVC, like any entity within the Committee's jurisdiction, must work with the Committee's requests and provide responses in an accurate and timely manner.

5. If the Secretary of Veterans Affairs, the White House, the Office of Management and Budget, the Office of Personnel Management, or any other official or private entity contacted you about a pending case, sought a commitment about how you would decide a case or category of cases, or issued a directive that you believed violated the law or threatened the Court's decisional independence, what would you do?

RESPONSE: A judge cannot allow outside political pressure to interfere with the business of the Court. I would not allow the Court's reputation for independence and integrity be questioned by any other person or office.

6. How has your background equipped you to serve in this role as a judge on the United States Court of Appeals for Veterans Claims?

RESPONSE: My background of solving problems and assisting veterans as they navigate the VA system though constituent casework has prepared me to understand the different perspectives each party would have before the Court. In addition, my work helping the Senator draft and pass legislation affecting veterans directly relates to some of the disability, pension, or education benefit issues that would likely arise in proceedings.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

RESPONSE: First, I would give the statute a plain reading and try to interpret the meaning of the words at the time they were written. If needed, I would then look at similar cases, while they may not be directly on point, they may offer guiding principles that could help when coming to a decision. In addition, I would review the Congressional intent when the statute was passed – review the floor debate, mark-up in committee, etc.

8. At any point during the process that led to your nomination, did you make any representation or commitment to anyone, including officials at the White House, VA, the Department of Justice, or any outside organization, as to how you would handle a particular case, legal issue, or category of claims if confirmed? Were you asked for your views on any pending or recently decided veterans law matter? If so, please explain fully.

RESPONSE: No.

9. How would you describe your judicial philosophy? When interpreting law and regulation, what roles should be played by statutory or regulatory text, structure, context, ordinary meaning, related provisions, precedent, history, statutory purpose, and legislative history?

RESPONSE: My philosophy is one of originalism. I would look at the intent of the legislation and determine what it meant at the time it was written. I would not legislate from the bench or allow outside public sentiment be the deciding factor in decision making.

10. Judges must decide cases based on the law and the record rather than their preferred policy outcomes. How would you separate any policy views, prior advocacy positions, or views developed in government or private practice from your responsibilities as a Judge?

RESPONSE: I would not consider any external positions that would interfere with making decisions based on the relevant statutes and prior judicial record before me. There is a responsibility to follow the law and precedent, not to allow irrelevant public policy views to influence rulings.

11. What qualities of judicial temperament do you believe are essential for service on CAVC?

RESPONSE: There are several qualities that are important - they include but are not limited to, integrity, competence, honesty, and fairness to all that appear before the Court.

12. If confirmed, what steps would you take as an individual Judge and as a member of the Court to improve timeliness without sacrificing careful review, due process, or decision quality?

RESPONSE: I would conduct regular meetings with staff to make sure that the office is functioning at a high level and make any corrections necessary so that all cases would be heard in a fair and efficient manner.

13. In Ingram v. Collins, 38 Vet. App. 130, CAVC held that, when the applicable diagnostic code and related rating provisions do not refer to medication, the Board must discount the ameliorative effects of medication when assigning a disability evaluation. On February 17, 2026, VA issued an interim final rule amending 38 C.F.R. 4.10 in response to Ingram. VA rescinded that rule ten days later, restored the prior regulatory text, and the Federal Circuit appeal was dismissed by agreement on March 30, 2026. Do you understand Ingram to remain binding CAVC precedent, and can you describe its holding?

RESPONSE: The CAVC held in Ingram that a disability rating could be lowered if medication/treatment improved veterans' symptoms. The CAVC decision in Ingram has not been overruled by the Federal Circuit so it is still in effect. However, after Ingram was decided the VA rescinded the interim rule and kept the original text. This means the VA cannot use the effectiveness of medication when determining a veteran's disability rating.

14. In Bufkin v. Collins, 604 U.S. 369, the Supreme Court held that the standard of review applicable to a challenge involving the benefit-of-the-doubt rule depends on whether the asserted error is legal or factual, and that VA's determination whether evidence is in approximate balance is predominantly factual and reviewed only for clear error. Is Bufkin binding precedent, and can you describe its holding?

RESPONSE: Yes, Bufkin is legally binding precedent by the Supreme Court which all lower courts must follow. In Bufkin, the Supreme Court held that evidence presented regarding a service-related claim in "approximate balance" is predominantly a factual determination that can only be reviewed by the CAVC for clear error.

15. The Court may consider petitions for extraordinary relief alleging that VA has unlawfully withheld or unreasonably delayed action. Please describe the legal standards governing mandamus, unreasonable delay claims, and enforcement of the Court's mandates. How would you preserve the extraordinary nature of mandamus while making certain that meaningful and effective relief are available when ordinary appellate review is inadequate?

RESPONSE: The CAVC uses a test when reviewing a mandamus petition. There must be no alternative remedy available to the claimant, and they must show a clear and indisputable right.

The Court uses the six factors as laid out in the Telecommunications Research & Action Center v. FCC, 750 F.2nd 70 (D.C. Cir. 1984). Those factors include the Rule of Reason, Statutory Timetable, Nature of Interests, Agency Priorities, Nature of Prejudice and the Court does not need to find that an impropriety was present.

When the CAVC does issue a mandate, the VA must follow the Court's ruling. In addition, the VA cannot change or ignore parts of the ruling, they must implement it in full. If the VA fails to do so, the Court can issue a new writ of mandamus to compel action.

If confirmed, I would make sure there was a careful review of all factors when issuing or denying relief. The order from the Court must provide clear reasons for its ruling, including referencing precedent and any "tests" used to come to a decision. There is a balance between the remedies that are already in place and the urgent need for relief.

16. Please describe with particularity the process by which these questions were answered.

RESPONSE: After receiving limited feedback from the Office of Legal Policy at the United States Department of Justice, I relied on my own knowledge of the VA system and a careful review of the cases mentioned above.

17. Do these answers reflect your true and personal views?

RESPONSE: Yes.

Pre-Hearing Questions for the Record
Nomination Hearing of James Quinn
Judge for the U.S. Court of Appeals for Veterans Claims
from Ranking Member Richard Blumenthal

1. Describe your professional Background and qualifications to serve as a Judge on the U.S. Court of Appeals for Veterans Claims (CAVC) and explain why you are seeking this position.

RESPONSE: For over 17 years I have served as a senior staffer in the United States Congress (almost 3 terms in the U.S. House and 2 terms in the U.S. Senate). In this capacity, I have helped oversee thousands of VA cases from constituents who needed help. In addition, I have supervised and helped introduce VA related legislation, some of which directly affect the types of cases the Court of Appeals for Veterans Claims will adjudicate. These experiences have prepared me to analyze statutes, see the effect of recent legislation, and gain an understanding of the process that a veteran undergoes. All of which will enable me to be a good judge on the CAVC.

2. Describe the circumstances of how you came to be considered for nomination to this position.

RESPONSE: After the passing of the AMA in 2017, I began following the Court and its operations with keen interest. I discussed my interest in the Court with Sen. Cassidy, and with his knowledge, I contacted the White House Counsel's office and expressed an interest in being considered for a vacancy should one arise.

3. Describe any experience you have with veterans' benefits law.

RESPONSE: I have seen firsthand the laws that Congress has passed to transform the way the VA handles claims. The passing of the AMA in 2017 and its implementation in 2019 has resulted in veterans getting a better chance at resolving their claims more quickly and more accurately. The PACT Act has dramatically expanded the pathways for veterans to receive their benefits. These experiences have provided me with a strong foundation that I believe would allow me to quickly adapt to the Court if confirmed.

4. How will your experience working in Congress inform your work on CAVC, if confirmed.

RESPONSE: I have had a front row seat to witness numerous bills pass the Veterans Affairs Committee for the last 12 years, have unique and valuable knowledge on how Congress intended for these bills to be implemented. In addition, I have experience handling casework issues which has helped me better understand the VA process starting with an intent to file a claim to issues that may end up before the CAVC.

5. How do you approach statutory interpretation, and what methodology do you use to determine congressional intent when statutory language is ambiguous?

RESPONSE: First, I would give the statute a plain reading to determine its ordinary public meaning at the time it was enacted. If needed, I would then look at similar cases; while they may not be directly on point, they may offer guiding principles that could help when coming to a decision. If the language was still ambiguous, I would review the Congressional Record, including reviewing the floor debate and mark-up in committee, to the extent they shed light on the plain meaning of the text at the time it was enacted. The Gardner presumption may also be applicable, meaning that ambiguity is resolved in favor of the veteran.

6. What are your views on the relative roles of attorney/advocate representation versus pro se representation in veterans' claims?

RESPONSE: There is a role for attorneys/advocates to represent veterans when claiming their benefits. Some veterans may need advice on the procedural and evidential requirements when navigating the VA system. I also believe that veterans should be aware that there are many support systems that are available within and outside of the VA that can help them throughout the process.

7. What do you consider a reasonable timeframe for the Court to issue a decision in a given case?

RESPONSE: The goal should be to resolve all cases timely and accurately. Many cases involve different circumstances so there is no one size that fits all. I would conduct regular meetings with staff to make sure that the office is functioning at a high level and make any corrections necessary so that all cases would be heard in a fair and efficient manner.

8. If you believed a Department of Veterans Affairs (VA) position reflected an incorrect interpretation of a statute — even though that position was consistent with long-standing agency practice — would you be willing to reverse it?

RESPONSE: Yes, a judge must be able to make tough decisions and overturn long-standing precedents if they are not consistent with the statutes passed by Congress. In doing so, I would follow the Supreme Court's guidance on the appropriate factors to consider when overturning a long-standing precedent.

9. Would the potential cost or disruption of overturning an established rule or practice factor into how you would adjudicate a case?

RESPONSE: The precedent from higher courts (either the Federal Circuit or the Supreme Court) would be the primary guidance in adjudicating a case. The cost and disruption to the VA system needs to be examined and understood, but if the rule is unconstitutional or would eventually cause even more disruption than keeping the status quo, then that may be a reason for the change.

10. The claims process — from the initial application through an appeal to the Board of Veterans' Appeals — is designed to be non-adversarial and preferential to the claimant. That posture changes once a case reaches the CAVC, where review is de novo and more traditionally adversarial. What in your background has prepared you to navigate that shift? How would you approach reviewing cases de novo after they've moved through a system intentionally designed to favor the claimant?

RESPONSE: While the CAVC reviews legal questions de novo, it applies a deferential standard for findings of fact (clearly erroneous). At the Court, it will be important to look at cases from a neutral stance, not favoring one party over the other unless there is a clear mandate from Congress or a higher court to do so. My background of helping with VA casework and familiarity with how the VA system operates has prepared me to understand the change in posture at the CAVC level.

11. Since the earliest days of judicial review of veterans' claims, courts have recognized that Congress intended VA to "fully and sympathetically develop the veteran's claim to its optimum." *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). Yet the claims process has moved increasingly toward mandatory forms and decisions that are fully or nearly fully automated. How do you view VA's duty to run a sympathetic, claimant-friendly process in an era of automation and AI? What would you expect of a veteran — particularly an elderly veteran — navigating this process, and what would you expect of VA?

RESPONSE: Technological shifts require oversight to ensure that they are implemented in a fair and reasonable manner for all parties. I would make sure that any veteran (or their beneficiaries), especially the elderly or impaired, who came before the CAVC understood the claims process and their rights to access their benefits.

12. For decades, the VA benefits system has struggled with inadequate medical evidence, a problem that has worsened since VA outsourced most compensation and pension exams to private contractors. Despite a CAVC remand rate that typically runs 80% or higher — driven in large part by inadequate exams — there has been little improvement. What role can the Court play in driving meaningful improvement in the quality of evidence VA produces?

RESPONSE: The Court can determine if an adequate compensation and pension exam was conducted through its judicial review responsibility and established legal precedents. There is also a "duty to assist" the veteran, including with their exam. The CAVC can

demand that the VA provide more justification for its rulings and punish repeated errors. In addition, the CAVC should ensure that the medical evidence meets the standards set by Congress and VA's own internal regulations.

13. Veterans are increasingly turning to unaccredited companies that conceal their own involvement while pushing mass-produced, AI-generated claims submissions. VA has issued numerous cease-and-desist letters to such companies in recent years, largely ignored, in part because there are no meaningful penalties for this unauthorized practice. What role should the Court play in addressing unaccredited representation, particularly where the responsible parties avoid formally appearing on the record?

RESPONSE: The Court should be conscious of the possibility of claims being submitted through AI and have a keen awareness that materials submitted to the Court may not have been produced by a human advocate or pro se litigant. If confirmed, I would welcome any training to identify these types of submissions.

14. Under the Supreme Court's 1994 decision in *Brown v. Gardner*, veterans' benefits statutes have historically been interpreted liberally in favor of veterans. This "pro-veteran canon" has come under increasing criticism from strict textualists. Do you believe there remains an ongoing role for the pro-veteran canon in interpreting veterans' benefits statutes?

RESPONSE: Unless the Supreme Court invalidates the Gardner presumption, it remains in effect and can be cited by the CAVC in its rulings.

15. Since many cases of military sexual trauma go unreported during service, do you believe non-DOD evidence can be sufficient for veterans to corroborate an instance of Military Sexual Trauma for purposes of establishing eligibility for disability compensation benefits?

RESPONSE: Yes, the VA specifically allows for alternative records to be used for proof of Military Sexual Trauma. They include, but are not limited to, personal statements made by the veteran around the time of the trauma, written accounts from those who knew the veteran, and health records from outside of the DOD.

16. Do you believe President Trump and White House officials have followed long-standing legal norms and ethics? Why or why not?

RESPONSE: All elected and appointed officials take an oath to the Constitution. Without additional information, I do not have an informed basis from which to answer this question.

17. Do you believe the President, VA Secretary, or any other Administration officials should have influence over CAVC? Why or why not?

RESPONSE: A judge cannot allow outside political pressure to interfere with the business of the Court. If confirmed, I would not allow the Court's reputation for independence and integrity to be questioned by any other person or office.

Questions for the Record
Nomination Hearing of James Quinn for
Judge for the U.S. Court of Appeals for Veterans Claims
From Ranking Member Richard Blumenthal

1. What is your current political party affiliation?

RESPONSE: I am not affiliated/registered with any political party.

2. Did anyone advise you to change your party affiliation prior to your nomination or during the nomination process?

RESPONSE: No.

3. Were you required to sign a Non-Disclosure Agreement during the nomination process?

RESPONSE: No.

James L. Quinn
Questionnaire

UNITED STATES SENATE

COMMITTEE ON VETERANS' AFFAIRS

ROOM 412 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510
Telephone: (202) 224-9126

QUESTIONNAIRE FOR PRESIDENTIAL NOMINEES

The Rules of the U.S. Senate Committee on Veterans' Affairs require that a Presidential nominee whose nomination is referred to the Committee submit, on a form approved by the Committee, a sworn statement concerning his or her background and financial interests, including the financial interests of the nominee's spouse and children living in the nominee's household. The Committee form is in two parts:

(A) Information concerning the employment, education, and relevant background of the nominee, which is made public; and

(B) Information concerning the financial and other background of the nominee, which is made public only when the Committee determines that such information bears directly on the nominee's qualifications to hold the position to which the individual is nominated.

Committee action on a nomination, including hearings or a meeting to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits this form unless the Chairman, with the concurrence of the Ranking Minority Member, waives the waiting period. In order to assist the Committee in its consideration of nominations, the Committee requests that each nominee complete the attached Questionnaire for Presidential Nominees. The notarized original and any supplemental information should be delivered to:

Committee on Veterans' Affairs
United States Senate
Room 412, Russell Senate Office Building
Washington, D.C. 20510

Attention: Chief Clerk

PART I: ALL OF THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	**Date of Nomination**
Judge, U.S. Court of Appeals for Veterans Claims	**9/14/2026**

Current Legal Name			
First Name	**Middle Name**	**Last Name**	**Suffix**
James	**Lewis**	**Quinn**	

Addresses					
Residential Address (do not include street address)			**Office Address** (include street address)		
[redacted]			**Street: 455 Dirksen Senate Office Building**		
City: Arlington	**State: VA**	**Zip: 22207**	**City: Washington**	**State: DC**	**Zip: 20510**

Other Names Used						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)

None.					**Est** ☐	**Est** ☐

Birth Year and Place	
Year of Birth (Do not include month and day)	**Place of Birth**
1979	**Metairie, Louisiana**

Marital Status					
Check All That Describe Your Current Situation:					
Never Married	**Married**	**Separated**	**Annulled**	**Divorced**	**Widowed**
☐	☐**x**	☐	☐	☐	☐

Spouse's Name (current spouse only)			
Spouse's First Name	**Spouse's Middle Name**	**Spouse's Last Name**	**Spouse's Suffix**
Shannon	**Eilene**	**Quinn**	

Spouse's Other Names Used (current spouse only)						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
Shannon	**Eilene**	**Cain**		**x**	**07/1984** Est ☐	**04/2017** Est ☐

Children's Names (if over 18)			
First Name	**Middle Name**	**Last Name**	**Suffix**
I do not have any children who are over 18.			

2. Education

List all post-secondary schools attended.

Name of School	**Type of School** (vocational/technical/trade school, college/university/military college/ correspondence/distance/extension/online school)	**Date Began School** (month/year) (check box if estimate)	**Date Ended School** (month/year) (check box if estimate) (check "present" box if still in school)	**Degree**	**Date Awarded**
Loyola University New Orleans School of Law	**Law School**	**08/2001** Est ☐	**05/2004** Est ☐ Present ☐	**J.D.**	**May 2004**
Tulane University	**University**	**08/1997** Est ☐	**05/2001** Est ☐ Present ☐	**B.A.**	**May 2001**

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other federal employment, State Government (Non-federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	**Name of Your Employer/ Assigned Duty Station**	**Most Recent Position Title/Rank**	**Location** (City and State only)	**Date Employment Began** (month/year) (check box if estimate)	**Date Employment Ended** (month/year) (check box if estimate) (check "present" box if still employed)
Federal Employment	**United States Senate**	**Chief of Staff**	**Washington, D.C.**	**01/2015** Est ☐	**Present** Est ☐
Federal Employment	**United States House**	**Chief of Staff**	**Washington, D.C.**	**09/2009** Est ☐	**01/2015** Est ☐
State Government	**State of Louisiana**	**Director, Boards and Commissions**	**Baton Rouge, LA**	**01/2008** Est ☐	**09/2009** Est ☐
Non-Government Employment	**GOP Party of Louisiana**	**Executive Director**	**Baton Rouge, LA**	**08/2006** Est ☐x	**01/2008** Est ☐
Federal Employment	**United States District Judge Jay C. Zainey**	**Extern**	**New Orleans, LA**	**08/2002** Est ☐x	**05/2004** Est ☐x
Non-Government Employment	**Lowe Stein, LLC**	**Summer Law Clerk**	**New Orleans, LA**	**05/2003** Est ☐x	**08/2003** Est ☐x
Non-Government Employment	**Hailey McNamara, LLP**	**Summer Law Clerk**	**Metairie, LA**	**05/2002** Est ☐x	**08/2002** Est. ☐x

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
None.		Est ☐	Est ☐ Present ☐

4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Tulane University, Academic Scholarship (1997 est.)

5. Memberships

List all memberships held in professional, social, business, fraternal, scholarly, civic, charitable, or other organizations in the last ten years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax-deductible donation of $1,000 or less, Parent-Teacher Associations, or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate)	Position(s) Held
Mystick Krewe of Louisianians	2010 - present (intermittent)	Member, Lieutenant
Knights of Columbus of Arlington	2020 - present	Member

6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
I have never been a candidate for or been elected or appointed to a political office.			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
None.			

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution
None.		

7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles or blog posts published on the Internet.

Title	Publisher	Date(s) of Publication
None.		

8. Public Statements

(A) List any testimony, official statements or other communications, including those made on the Internet including on social media or other digital content sites, relating to matters of public policy that you have issued or provided or that others presented on your behalf to public bodies or officials.

None.

(B) List any speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the dates and places where such speeches or talks were given.

To my knowledge, none.

(C) List all interviews you have given to newspapers, magazines or other publications, and radio or television stations (including the dates of such interviews).

During my time as Executive Director of the GOP Party of Louisiana (2006 - 2008), I gave interviews, but they were rare. I do not possess a copy of those articles or transcripts.

9. Agreements or Arrangements

☐ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)
Not applicable.		

10. Lobbying

Have you ever registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

11. Testifying Before the Congress

(A) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such Committee?

Yes.

(B) Do you agree to provide such information as is requested by such a committee in a timely and accurate manner?

Yes, I agree to provide all such information that I am legally authorized to disclose.

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

SUPPLEMENTAL QUESTIONNAIRE FOR NOMINEES
TO THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS

PUBLIC

1. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels, or conferences of which you are or have been a member, and provide the titles and dates of any offices which you have held in such groups.

   Louisiana Bar Association
   Member (2005 – present)

2. **Bar and Court Admission**:

   a. Are you currently a member in good standing of the bar of a Federal court or of the highest court of a state?

      Yes.

   b. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

      Louisiana, May 2, 2005. There were voluntary lapses in membership (not because of any disciplinary action) from 2007 to 2008 and 2011 to 2022 due to the non-requirement of my work in Congress to keep an active bar license. A few years ago, I applied to have my license reactivated, which was granted by the Louisiana Bar Association.

      In an abundance of caution, I note that I passed the Georgia bar exam (2006 est.) but am not an active member of the State Bar of Georgia.

   c. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Provide the same information for administrative bodies that require special admission to practice.

      Supreme Court of the United States, 2024.

      Louisiana, 2005.

From 2007 to 2008 and 2011 to 2022, there were voluntary lapses in my admission to practice before Louisiana's state courts due to the non-requirement of my work in Congress to keep an active bar license.

3. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Question 12 on the Committee's initial questionnaire, to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, or conferences.

Mystick Krewe of Louisianians
Member and Lieutenant (2010 – Present)

Knights of Columbus of Arlington, VA
Member (Present)

b. Indicate whether any of these organizations of which you are a member currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe what efforts, if any, you made to try to change the organization's discriminatory policies or practices.

The Knights of Columbus is a Catholic fraternal organization whose membership is limited to men, although there is a corresponding organization for women. To my knowledge, the other listed organization does not discriminate nor has it formerly discriminated on the basis of race, sex, religious or national origin, either through formal membership requirements or the practical implementation of membership policies.

4. **Published Writings and Public Statements**:

a. If you have published any written materials (letters to the editor, articles, reports, memoranda, policy statements, friend of the court briefs, testimony or other official statements or communications) relating in whole or in part to matters of public policy or legal interpretation related to veterans issues, please supply those materials to the Committee.

None.

b. Supply transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions that related in

whole or in part to veterans issues. If you do not have a copy of the speech or a transcript or recording of your remarks, provide the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

(Note: As to any materials requested in this question, please omit any confidential materials or materials protected by the attorney-client privilege.)

None.

5. **Legal Career:** Answer each part separately.

A. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge and, if so, the name of the judge, the court, and the dates of the period you were a clerk;

Since graduating from law school, I have not clerked for a judge.

ii. whether you practiced alone and, if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2006 - 2008
Republican Party of Louisiana
PO Box 3557
Baton Rouge, LA 2998
Executive Director and Counsel

2008 - 2009
Governor Bobby Jindal
900 N. Third St.
Baton Rouge, LA 70802
Director of Boards and Commissions

2009 - Present
Office of Sen. Bill Cassidy (House 2009 - 2015, Senate 2015 - Present)
455 Dirksen Office Building
Washington DC 20510

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the ten most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years;

Almost all of my legal career has been dedicated to government service. My practice began advising a state party (2006) as the Executive Director and Counsel and shifted to helping a Governor navigate statutes dealing with appointments as the Director of Boards and Commission for Gov. Bobby Jindal (2008). Since 2009, I have helped advise a Congressman and then Senator on the best opportunities to serve the people of Louisiana and our country.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized;

My legal career has been atypical in that I serve all the people of one state. My work involves solving problems that are local, statewide, or affect the entire country. For example, we implement and supervise systems to ensure Veterans receive the benefits they have earned.

iii. any law practice or legal experience that involved veterans' law.

I have used my law degree to help research and advise on various pieces of legislation including, but not limited to, the Pro Act, PACT Act, Informing VETS Act, VETPAC Act, Veterans Transition to Trucking Act, Solid Start Act, Dept of VA Accountability and Whistleblower Protection Act, Elizabeth Dole Act of 2024, and Gold Star and Surviving Spouse Career Services Act. I helped provide Congressional oversight for the construction and development of the new VA Hospital in New Orleans after Hurricane Katrina. During my tenure I have supervised and/or worked on approximately 2,000 Veterans constituent cases.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Senate Ethics does not allow staffers like me to represent clients, even on a pro bono basis. As a result, I have not practiced litigation or appeared in any court.

i. Indicate the percentage of your practice in:
   1. federal courts **0%**
   2. state courts of record **0%**
   3. other courts **0%**
   4. administrative agencies **0%**

ii. Indicate the percentage of your practice in:
   1. civil proceedings **0%**
   2. criminal proceedings **0%**

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None.

e. Describe your practice, if any, before the Supreme Court of the United States. Supply any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

6. **Litigation**: Describe the ten most significant litigated matters that you personally handled, whether or not you were the attorney of record. Provide the citations, if the cases were reported, and the docket number and date if unreported. Provide a summary of the substance of each case. Identify the party or parties whom you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   a. the date of representation;
   b. the name of the court and the name of the judge or judges before whom the case was litigated; and
   c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Senate Ethics does not allow staffers like me to represent clients, even on a pro bono basis.

7. **Judicial Opinions/Offices:**

a. If you are or have ever been a judge, attach a statement providing (1) citations for the ten most significant opinions you have written, (2) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (3) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions were not officially reported, please provide a copy of the opinions.)

I have never served as a judge.

b. State (chronologically) any judicial office you have held and whether you were elected or appointed. Please provide a description of the jurisdiction of each such court.

Not applicable.

8. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities.

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I was not involved in litigation in my legal career.

9. **Lobbying Activities:** List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have never performed any lobbying activity.

10. **Teaching**: What, if any, courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide copies to the committee.

American Constitutional Law, 2009
Louisiana State University
I taught an introduction course on the American Constitution that covered basic concepts on the structure of the Constitution, how government works, and certain individual rights and freedoms.

11. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

I have no plans to seek outside employment.

12. **Principal Office of the U.S. Court of Appeals:** By statute, the principal office of the U.S. Court of Appeals for Veterans Claims is in the Washington, D.C., metropolitan area. If confirmed, would you maintain your permanent residence within commuting distance of the Court while in active service?

Yes. I currently reside in Arlington, Virginia, and will continue to fulfill all statutory requirements, including those of 38 U.S.C. 7255.

13. **Charitable or Volunteer Work:** Please describe any charitable or volunteer work, including pro bono work, you have performed, particularly any work involving military personnel, veterans, or their families.

I have dedicated my career to public service. Outside of my professional capacity, my volunteer efforts have been through the Knights of Columbus, delivering Thanksgiving Day meals for those in need, every year, and as an active member in St. Ann Catholic Church in Arlington, Virginia.

Nomination Material for
HON. MARIA LOPEZ

Statement of Maria Chapa Lopez

Nominee for

Chair, Board of Veterans' Appeals

Department of Veterans Affairs (VA)

before the

Committee of Veterans' Affairs

United States Senate

September 23, 2026

Chairman, Ranking Member, and distinguished Members of this Committee, thank you for the opportunity to appear before you today. It is a profound honor to be nominated by President Trump to serve as Chair of the Board of Veterans' Appeals.

I also want to thank this Committee for its longstanding commitment to our Nation's Veterans and to strengthening the system that delivers the benefits they have earned through their service and sacrifice.

Service to our country, and to those who have worn the uniform, is deeply personal to me and to my family.

I had the privilege of serving as an officer in the United States Army. My husband is an Army veteran who continues his commitment to public service today as a law enforcement officer. And my niece is a Veteran of the United States Air Force. Like so many American families, service to our Nation is woven into our lives, and we understand both the sacrifices made by those who serve and the promises our country makes to them in return.

I am also the proud daughter of immigrants and a first-generation American. The opportunities this country has provided to me and my family are the embodiment of the American dream. My life and career have been shaped by the values of hard work, service, faith, and gratitude for this Nation and the opportunities it continues to offer me. Public service has always been my way of giving back to the country that has given so much to me and to my family.

Throughout my career, I have tried to honor those values through public service. As a federal prosecutor, and later as the United States Attorney for the Middle District of Florida, I had the privilege of leading one of the largest United States Attorney's Offices in the country. I have also led in the Army, where I served as a

Judge Advocate, advising commanders and helping guide legal decision-making in complex and high-stakes environments.

My experience at both at the Department of Justice and in the United States Army, taught me that successful stewardship of large, mission-driven organizations requires principled leadership, disciplined processes, accountability and, most of all, respect for the people carrying out that mission. For a large share of my professional life, I have managed large teams responsible for legal decisions that profoundly affect people's lives. I also understand that supporting a professional, motivated workforce is essential to ensuring those decisions are timely, consistent, and grounded in the law.

As both a United States Attorney and as an Army JAG officer, I was entrusted to exercise objective judgment based on the law and the facts, without undue influence, and to uphold the integrity of the institutions I served. My commitment has always been to the law, to the facts of each case, and to the people we serve, and that is exactly how I would approach this role as well.

In my view, these same principles are essential to the work of the Board of Veterans' Appeals.

For many Veterans and their families, the Board represents their final opportunity within the Department of Veterans Affairs to receive a full and fair review of their claims. Every appeal represents a Veteran or family seeking a fair answer from the system created to serve them. They deserve decisions that are thoughtful, legally sound, and delivered without unnecessary delay.

In advance of this hearing, I have become familiar with the substantial improvements in VA care and benefits during the first 18 months of this Administration. I know the Secretary, VA leadership and the Board are committed to doing even more. I fully recognize the value and importance of continuing efforts to improve the timeliness of decisions while maintaining the high standards of legal review that Veterans deserve.

If confirmed, I will commit myself to supporting continuous efforts to promote further efficiency, consistency in decision-making, and the responsible stewardship of the Board's resources in ways that best serve the needs of Veterans and their families we are sworn to serve.

As Chair, I would also be committed to ensuring the Board continues to operate as a fair and independent adjudicatory body while working collaboratively with the Department, this Committee, and Veterans service organizations to serve veterans effectively.

If confirmed, my priority will be to support the dedicated Veterans Law Judges and professional staff of the Board in carrying out this critical mission—ensuring fairness, efficiency in the process, consistency in the application of the law, and respect for due process.

Recently our Nation observed Memorial Day and commemorated the anniversary of D-Day, reminding us once again of the extraordinary courage and sacrifice of the men and women who have defended our freedoms across generations. Our Veterans stepped forward when called upon to serve.

If confirmed, it would be the honor of my life to step forward to serve them in return and help ensure that our Nation keeps its promises to those who have worn the uniform.

Thank you for the opportunity to appear before you today. I welcome your questions.

Pre-Hearing Questions for Maria Lopez
Nominee for Chair for the Board of Veterans' Appeals
U.S. Department of Veterans Affairs
From Senator Jerry Moran
Chairman, Senate Committee on Veterans' Affairs

June 10, 2026

1. **Please detail the professional and personal experiences that you believe have prepared you to help lead the Board of Veterans' Appeals (BVA).**

   My professional background has centered on leadership, public service, legal decision-making, accountability, and mission-focused operations. I served as an Army Judge Advocate, Assistant United States Attorney, Deputy Attaché with the U.S. Department of Justice in Mexico City, and United States Attorney for the Middle District of Florida. Throughout my career, I have worked in complex organizations requiring sound judgment, fairness, integrity, and operational leadership.

   As a veteran myself, I understand the importance of ensuring veterans are treated with dignity, respect, and fairness. My experience leading teams, managing high-volume legal operations, and working within adjudicative and oversight frameworks has prepared me to help lead the Board in carrying out its important mission on behalf of veterans and their families.

2. **What do you think are the most significant challenges facing BVA? If confirmed, what would your highest priorities be and what would you intend to accomplish to help address those challenges?**

   The most significant challenges facing BVA include the timely resolution of appeals, reducing avoidable remands, maintaining consistency and quality in decisions, and managing a large and complex inventory of pending appeals.

   If confirmed, my priorities would include improving timeliness while maintaining legally sound and well-reasoned decisions; identifying recurring error patterns that contribute to remands; supporting training and consistency across the Board; and improving transparency and communication with stakeholders and Congress. I would also evaluate how technology and data analytics may assist the Board in improving efficiency while preserving independent human judgment in adjudication.

3. **What do you think is the appropriate role of VA in an average veteran's life and, if confirmed, how would you work to improve outcomes among the veterans, caregivers, survivors, and others who use VA health care, benefits, and services?**

   VA should serve as a reliable partner for veterans and their families, particularly when they seek access to healthcare, benefits, rehabilitation, caregiver support, and other services earned through military service.

   If confirmed, I would work to improve outcomes by supporting a fair, timely, and transparent appeals process that promotes confidence in the system. Veterans and their families should receive decisions that are understandable, legally sound, and issued as efficiently as possible.

4. **Please describe your understanding of the mission of BVA. Do you anticipate making any changes to such mission? If so, how and why? If not, why?**

   My understanding is that the mission of BVA is to provide fair and timely appellate review of veterans' benefits decisions in accordance with the law while ensuring veterans receive full due process.

   If confirmed, I do not anticipate changing the mission of the Board. My focus would be on supporting the effective execution of that mission through consistency, accountability, professionalism, and timely adjudication.

5. **Please describe your understanding of the current organizational structure of the Board. Do you anticipate making any changes to such structure? If so, how and why? If not, why?**

   My understanding is that the Board consists of Veterans Law Judges, attorneys, and professional staff organized to support appellate review and decision-making across multiple dockets and case types.

   Before considering structural changes, I believe it is important to assess current operations, speak with leadership and employees, and evaluate where improvements may be needed. If confirmed, my initial focus would be on operational efficiency, consistency, communication, and identifying opportunities to improve adjudication and reduce unnecessary delays.

6. **What do you see as the role of this Committee and Congressional oversight in general?**

Congressional oversight is essential to transparency, accountability, and maintaining public confidence in government institutions. This Committee plays a critical role in representing veterans and ensuring VA remains focused on its mission.

I view oversight as an important partnership that promotes accountability, transparency, and continuous improvement in service to veterans and their families.

7. **If confirmed, will you commit to holding regular briefings, no less than quarterly, with Committee staff?**

   Yes. If confirmed, I will support regular communication and quarterly briefings with Committee staff to discuss priorities, challenges, operational trends, and ongoing efforts to improve services and outcomes for veterans.

8. **If the Secretary, the White House, the Office of Management and Budget, the Office of Personnel Management, or other official entities are working on or issue a directive or guidance that you believe violates the law or could have an adverse impact on services and benefits for veterans, caregivers, and survivors, what would you do?**

   I will follow the law. Throughout my career as an Army JAG officer, federal prosecutor, and United States Attorney, I have taken an oath to support and defend the Constitution. If confirmed, I would continue to uphold those obligations and raise concerns through the appropriate channels if I believed a directive was unlawful or inconsistent with the fair administration of veterans' benefits.

9. **BVA currently has approximately 200,000 pending appeals and can adjudicate roughly 120,000 cases per year — a structural gap that can leave veterans waiting years for decisions. What is your plan to close that gap, and what is a realistic timeline for doing so?**

   Reducing the inventory of pending appeals while maintaining decision quality will require a sustained and data-driven approach. If confirmed, my initial priority would be assessing current workflows, identifying bottlenecks, evaluating remand trends, and reviewing resource allocation and operational practices.

10. **In recent years, remands have accounted for a significant portion of BVA dispositions while BVA touts their docket numbers have gone down. While remands can correct errors, they also prolong the time veterans wait for a final decision. What do you see as the primary drivers of remands today, and, if confirmed, what**

changes would you pursue to improve decision quality earlier so veterans receive final answers in a quicker fashion?

My understanding is that remands may result from a variety of factors, including incomplete development, inadequate medical opinions or examinations, legal error, evolving case law, or insufficient factual findings.

If confirmed, I would focus on identifying recurring causes of remands and improving coordination, training, and quality review processes to address issues earlier in the adjudication process. The goal should be to ensure veterans receive legally sound decisions as efficiently as possible while preserving due process protections.

11. **Nearly a decade after enactment of the Appeals Modernization Act (AMA; Public Law 115-55), stakeholders continue to raise concerns about high remand rates and lengthy waits in certain dockets. From your perspective and with your background, what changes are needed to improve the appeals system, reduce avoidable remands, and provide veterans with more timely decisions?**

AMA represented a significant effort to modernize and streamline the appeals process. While I would want to further assess operational data and stakeholder feedback before recommending major changes, I believe continued focus on consistency, training, quality review, and early identification of recurring issues may help reduce avoidable remands and improve timeliness.

12. **Do you believe the current evidentiary and duty-to-assist framework under AMA is functioning as Congress intended, or are there statutory changes that would improve efficiency while preserving veterans' due process rights?**

I believe the duty-to-assist framework reflects Congress's intent to ensure veterans receive fair consideration of their claims while balancing timeliness and administrative efficiency. Before recommending statutory changes, I would want to assess operational data, review stakeholder concerns, and better understand how the framework is functioning in practice across different dockets and claim types.
Any future changes should carefully preserve veterans' due process rights while supporting efficient and timely adjudication.

13. **Veterans and advocates have raised concerns that some appeals are being remanded for additional medical examinations or opinions when sufficient evidence may already exist in the record to make a decision. While obtaining necessary evidence is important, unnecessary exams can add months or even years to the appeals process. BVA's duty is to decide appeals, not perpetually develop them. If confirmed, what steps would you take to make certain that Veterans Law Judges are not ordering remands for additional examinations simply to obtain more evidence when the existing record is already adequate to reach a decision?**

Remands should be based on legal necessity and the need for an adequate record rather than a preference for additional development where sufficient evidence already exists to make a decision.

If confirmed, I would support continued training, quality review, and analysis of remand patterns to help ensure remands are legally appropriate, consistent, and necessary. The objective should be to provide veterans with timely, well-supported decisions while avoiding unnecessary delays.

14. The U.S. Court of Appeals for Veterans Claims (CAVC) vacates or remands a significant percentage of BVA decisions appealed to it. What does that rate tell you about decision quality at BVA, and what systemic steps would you take to reduce preventable remands?

CAVC remands and vacaturs can reflect a number of factors, including legal complexity, evolving precedent, inadequate development, or deficiencies in analysis or explanation. Reviewing those trends can provide important insight into areas where improvements may be needed.

If confirmed, I would support ongoing review of remand data, identification of recurring issues, targeted training, and efforts to improve consistency and clarity in decisions. The goal should be reducing preventable remands while maintaining fairness and adherence to the law.

15. BVA has increasingly remanded appeals involving the Program of Comprehensive Assistance for Family Caregivers (PCAFC), but many of those remands then sit at the Veterans Health Administration for extended periods without resolution. If confirmed, what specific steps would you take to improve accountability for remanded PCAFC appeals and make certain that veterans and caregivers receive timely decisions after a BVA remand?

Timely action following remand is important in all cases, particularly those involving veterans and caregivers who may be relying on critical support services.

If confirmed, I would work with relevant stakeholders to better understand the causes of delays in PCAFC remands, improve communication and coordination between the Board and VHA, and evaluate whether additional tracking, reporting, or operational measures may improve timeliness and accountability.

16. If confirmed, do you believe BVA should publicly track and report the age and status of remanded PCAFC cases so Congress can better assess whether remands result in timely action?

Transparency and accurate reporting are important tools for accountability and informed oversight. If confirmed, I would support evaluating whether additional reporting

regarding PCAFC remands may assist Congress, veterans, caregivers, and VA leadership in assessing timeliness and identifying opportunities for improvement.

17. BVA's annual reporting does not provide Congress with a clear picture of how many appeals are granted, denied, or remanded across key benefit programs, including caregiver appeals. As a result, many outcomes are effectively hidden from congressional oversight. If confirmed, would you support enhanced public reporting on appeal outcomes, and what additional metrics do you believe Congress should receive to evaluate BVA's performance?

Yes, I support transparency and meaningful reporting that assists Congress and stakeholders in evaluating performance, timeliness, and outcomes across the appeals system.

If confirmed, I would review current reporting practices and evaluate whether additional metrics regarding grants, denials, remands, case aging, and post-remand processing times may provide greater transparency and assist in identifying operational trends and areas for improvement.

18. If confirmed, would you commit to publishing more detailed data on remands by issue type, including how long remanded cases remain pending before a final resolution is reached?

Yes. If confirmed, I would support evaluating additional reporting and data transparency regarding remands and post-remand timelines, consistent with applicable law, operational capabilities, and the goal of improving accountability and performance across the appeals process.

Pre-Hearing Questions for Maria Chapa Lopez
Nominee for Chair of the Board of Veterans' Appeals
Submitted by Ranking Member Richard Blumenthal
Senate Committee on Veterans' Affairs

1. **Describe your background and qualifications and why you want to be the next Chair of the Board.**

   I am a veteran, attorney, and career public servant with more than three decades of legal and leadership experience. I served as an Army Judge Advocate and achieved the rank of Lieutenant Colonel. I spent more than twenty years with the Department of Justice, including service as an Assistant United States Attorney, Deputy Attaché at the United States Embassy in Mexico City, and ultimately as United States Attorney for the Middle District of Florida.

   Throughout my career, I have frequently entered new mission areas, learned complex bodies of law, relied on experienced professionals, and successfully led organizations through periods of significant change. Whether serving in uniform, as a federal prosecutor, or in leadership positions within the Department of Justice, I have been entrusted with making difficult decisions that affect people's lives. Those experiences taught me the importance of fairness, accountability, independence, and respect for the rule of law.

   My connection to the veteran community is both personal and professional. I am a veteran; my husband is a veteran, and my niece is a veteran. Those experiences have given me a deep appreciation for military service and for the benefits earned through that service.
   If confirmed, my goal will be to ensure that veterans and their families receive fair, accurate, and timely decisions while maintaining the Board's independence, integrity, and commitment to the law.

2. **Describe your management style and previous management experience, including the number of employees you supervised, and how it has prepared you to succeed in this position.**

   My management style is collaborative, mission-focused, and accountable. I believe leaders should establish clear goals, communicate expectations clearly, provide employees with the tools and support necessary to succeed, and hold themselves and their organizations accountable for results.

   Throughout my military and civilian career, I have led organizations ranging from small legal teams to large multidisciplinary workforces responsible for complex legal and operational missions. These experiences prepared me to lead organizations facing complex workloads, competing priorities, and significant public responsibilities. They taught me how to manage large professional workforces, use data to drive decisions, allocate resources strategically, and remain focused on mission accomplishment while supporting the people responsible for carrying out that mission.

   As United States Attorney for the Middle District of Florida, I led one of the largest United States Attorney's Offices in the nation. The district spans more than half of Florida's counties and operates through five staffed offices located throughout the district. In that role, I supervised hundreds of attorneys, professional staff, and contractors while working closely with federal law enforcement agencies including the FBI, DEA, ATF, United States Marshals Service, Homeland Security Investigations, and other Department of Justice partners.

3. **What are your top three specific and measurable goals if confirmed in this position and how would you achieve them?**

My first goal would be to ensure the Board continues meeting its timeliness goals under the Appeals Modernization Act by reducing wait times for veterans and their dependents. Specifically, I would seek to maintain or improve performance toward goals of approximately 365 days or better for the Direct Review docket, 550 days or better for the Evidence Submission docket, and 730 days or better for the Hearing docket.

My second goal would be to ensure the Board has the workforce, training, technology, and operational resources necessary to continue serving veterans effectively. One important measure of success would be continued reductions in wait times while maintaining the quality and consistency of Board decisions.

My third goal would be to improve transparency and predictability for veterans and their families by developing and publishing information that helps them better understand their review and appeal options and make informed decisions about which path best serves their needs and expectations.

4. **Congress passed the Appeals Modernization Act (AMA) to reform the claims appeals process following a push to reduce the backlog, which resulted in an appeals backlog. We are seeing a similar trend, with the Board expecting to receive 20,000 more appeals this fiscal year than expected and see its first increase in pending appeals next year. How will you ensure the Board is properly staffed and funded to meet the needs of its increased workload?**

   If confirmed, I will use workload data, performance metrics, and operational analysis to advocate for the staffing, technology, and resources necessary to meet the Board's mission. As one of the Secretary's direct reports, I would ensure that Board leadership clearly communicates workload trends, operational needs, and resource requirements so that informed decisions can be made regarding staffing and funding.

   Retaining experienced employees and ensuring adequate resources will be critical to serving veterans effectively and reducing wait times.

5. **The Board has made significant progress with pre-AMA ("Legacy") appeals, but there are still more than 17,000 Legacy appeals pending at the Board. What is your plan to resolve these Legacy appeals so the Board can finally commit to AMA appeals?**

   The Board has made remarkable progress reducing the Legacy inventory, and I commend the employees who have contributed to that effort.

   Before taking action, I would want to take time to evaluate the characteristics of the remaining inventory and assess the most effective approach for resolving those appeals. My understanding is that many of the remaining cases may present unique challenges that have prevented earlier resolution.

   If confirmed, I would work with Board leadership to identify opportunities to resolve those appeals efficiently while ensuring each veteran receives full and fair consideration of his or her claim. At the same time, I would remain focused on preventing future delays within the AMA system.

6. **Joint motions to remand (JMRs) are a common occurrence. In fact, more than two-thirds of remands to the Board from the Court of Appeals for Veterans Claims (CAVC) are JMRs. How do you intend to coordinate with CAVC to reduce recurring errors from the Board?**

   I recognize that the Board and the Court serve different but complementary roles within the veterans benefits system, and I would fully respect those institutional boundaries.

If confirmed, I would welcome appropriate professional engagement with Court leadership to better understand recurring issues that result in remands. I would also review remand trends in an effort to identify recurring issues, understand their root causes, and evaluate opportunities for improvement.

Reducing avoidable remands benefits veterans, the Board, and the Court.

7. **Congress has been exploring ways to reduce the remand churn between the CAVC and the Board. This includes expanding the use of motions to reconsider or other ways for appellants to address concerns with the Board decision, without having to seek a JMR from CAVC. What are your thoughts on initiatives the Board can undertake, or authorities Congress can grant the Board to address concerns about the quality of Board decisions?**

   I understand Congress has expressed interest in identifying ways to reduce unnecessary remands and improve the efficiency of the appeals process. If confirmed, I would make understanding the causes of recurring remands an early priority.

   Before endorsing any specific proposal, I would want to review available data, consult with Board leadership and subject matter experts, and evaluate whether potential changes would improve efficiency while protecting veterans' due process rights and maintaining the quality of Board decisions.

8. **The majority of the Board's workload comes from veterans appealing Veterans Benefits Administration (VBA) decisions. What is the Board's role in reducing recurring errors from VBA?**

   The Board's role is to independently review appealed decisions and correctly apply the law to the facts of each case. When recurring errors are identified, Board decisions can help clarify those issues and promote greater consistency throughout the system.

   At all times, the Board must remain focused on its statutory responsibility to provide fair and legally sound decisions in the cases before it.

9. **Many law school clinics help veterans with appeals. How do you intend to establish and cultivate relationships between the Board and these clinics?**

   Throughout my career, I have worked with law schools, mentored law students and young attorneys, participated in educational programs, and supported the development of future legal professionals. Those experiences have given me a strong appreciation for the important role law school clinics play in both serving veterans and training future advocates.

   If confirmed, I would encourage regular engagement between the Board and veterans law clinics through outreach, educational programs, and opportunities to exchange information regarding common procedural issues and best practices.

10. **What is your plan to establish and cultivate relationships between the Board and Veteran Service Organizations and other veteran advocacy groups, with a focus on encouraging better participation in remote hearings?**

    Veteran Service Organizations are among the Board's most important partners because they represent and assist many of the veterans who appear before the Board. I have already had the opportunity to engage with veteran organizations in Florida and have seen firsthand the valuable role they play in serving veterans and their families.

If confirmed, I would seek to engage in regular communication with VSOs and veteran advocacy organizations to better understand the concerns they hear from veterans and their families. I would also want to understand any barriers veterans face in participating remotely and evaluate whether there are opportunities to improve awareness, accessibility, technology, or communication regarding remote hearing options.

11. Board hearings are often the first time veterans engage lawyers to represent them. What is your plan to establish and cultivate relationships between the Board and groups representing veterans' law attorneys?

Attorneys and other representatives who represent veterans play an important role in helping claimants understand and navigate the appeals process.

If confirmed, I would maintain an open dialogue with organizations representing veterans law practitioners and seek constructive feedback regarding procedures, hearing practices, and recurring issues affecting veterans. While maintaining the Board's independence and impartiality, I believe regular communication can help identify opportunities for improvement and increase confidence in the process.

12. It appears the Board needs significant upgrades in its IT to keep up with caseloads. What is your plan to advocate for Board IT needs compared to other competing VA priorities?

Technology should support the Board's mission, not replace the judgment of Veterans Law Judges and Board attorneys.

If confirmed, I would work closely with VA leadership to identify technology investments that produce measurable improvements in efficiency, accuracy, and employee effectiveness. As a direct report to the Secretary, I would advocate for Board technology needs using objective data regarding workload, productivity, timeliness, and quality outcomes.

13. For veterans, hearings are where they can look a veterans law judge (VLJ) in the eye and make their case. They are often distraught, however, when they see that the judge who signed the Board decision is not the same judge who heard their arguments. VLJs have also indicated to Congress that they want to make decisions on their hearings. Do you believe judges who preside over a hearing should be allowed to issue the decision?

My understanding is that, in the overwhelming majority of cases, the Veterans Law Judge who conducts the hearing is also the judge who participates in deciding the appeal.
I also understand that Congress and VA have established procedures that allow a different judge to issue a decision in limited circumstances when the original hearing judge is unavailable and waiting would create additional delay for the veteran.
As a general matter, I appreciate why veterans value continuity and may prefer that the judge who heard their testimony participate in deciding the case. At the same time, I would want to ensure that any approach adopted by the Board remains consistent with governing law and does not unnecessarily delay decisions for veterans.

14. The BVA Chairman has an important role in recommending VLJs. How do you plan to recommend VLJs, and will you vow to consider only the applicant's qualifications and experience?

Yes. If confirmed, I would evaluate applicants based on qualifications, experience, judgment, temperament, integrity, and commitment to serving veterans. Merit and fitness for judicial service would be the primary factors guiding my recommendations.

15. The Board has been largely exempted from the Trump Administration's return to office initiatives. To this point, the Administration has realized that requiring all Board employees to return to the office is unreasonable. However, other workforce initiatives, like the deferred resignation program, have resulted in a decrease in Board employees, despite the increased workload. What is your plan to ensure the Board hires and retains top-quality employees?

I was encouraged to learn that attorney attrition at the Board is currently at its lowest level in many years.

Before implementing changes, I would want to evaluate the factors that have contributed to that improvement and assess where additional improvements may be needed. My goal would be to preserve what is working well while continuing to strengthen recruitment, retention, and employee development efforts.

16. VA's rollout of AI has been controversial, as it has missed and misunderstood important evidence, according to VA OIG. At the same time, Board attorneys have reported burnout and overworking, so how will you balance the need for accuracy and integrity with the need to retain staff and dispose of cases efficiently with regard to AI use?

I believe technology, including AI-enabled tools, should assist employees rather than replace human judgment.

Veterans deserve decisions based on a careful review of the evidence and application of the law. Any technology used by the Board must therefore be accurate, reliable, transparent, and subject to appropriate human oversight.

If confirmed, I would be interested in exploring tools that help employees organize information, locate relevant evidence, and perform administrative tasks more efficiently. However, I would not support relying on automated systems to make adjudicative decisions. Human judgment must remain at the center of the appeals process.

17. In the December 10, 2025, hearing discussing the Veterans Appeals Efficiency Act, VA testified that it did not support aggregation authority for the Board. Do you agree with the VA's assessment that claim aggregation would "alter the Board's case processes and would upend docket order rules in unfair ways for many Veterans with pending appeals?" Why or why not?

I have not yet had the opportunity to study in sufficient depth this proposal to offer a fully informed opinion.

If confirmed, I would carefully review the proposal, consult with Board leadership and evaluate its potential impact on fairness, docket management, efficiency, and veterans' due process rights before reaching any conclusions.

18. The Court of Appeals for Veterans Claims has ruled that tinnitus, and hearing loss must be rated separately, given their unique symptomatology.[1] It is well-established that one does not first need

[1] *See Fountain v. McDonald*, 27 Vet. App. 258, 270 (2015) ("[D]amage to the inner ear may be a precursor for subjective tinnitus, but [] subjective tinnitus is generated within the central auditory pathways. Comparing

hearing loss to have tinnitus. However, there have been efforts to eliminate tinnitus as a standalone disability rating. Requiring veterans to first have service-connected hearing loss before being eligible for a disability rating for tinnitus. Do you think the CAVC and VA's prior reasoning for rating hearing loss and tinnitus separately makes sense, and if not, what is your interpretation of those two claims and their relation to one another?

I have not yet had the opportunity to study in depth this issue.

If confirmed, I would faithfully apply the law as enacted by Congress and interpreted by the courts, including precedential decisions of the Court of Appeals for Veterans Claims and higher courts, while continuing to deepen my understanding of veterans law.

19. **The Board's annual report currently aggregates grants, denials, and remands without breaking them down by issue type per fiscal year. Given reports of widespread inadequate examinations from third-party contractors that necessitate Board-mandated development—often adding years to veterans' appeals— do you believe the board should report grants, denials, and remands on a per-issue basis? How would you improve transparency to enable effective Congressional oversight?**

Transparency is important both for veterans and for Congress's oversight responsibilities.

My understanding is that the Board already publishes a significant amount of performance data, but if confirmed I would review whether additional issue-specific reporting could provide meaningful insight without creating undue administrative burden.

If additional reporting would improve understanding of outcomes, remand trends, or recurring challenges, I would be open to exploring those options. More broadly, I support providing veterans and Congress with clear, accurate, and useful information regarding the Board's performance and workload.

20. **The Board was recently given responsibility to process Program of Comprehensive Assistance for Family Caregivers appeals from the Veterans Health Administration (VHA). Board employees currently lack familiarity with the program's eligibility criteria for grants or denials. How would you ensure caregiver appeals are not wrongfully denied due to this knowledge gap?**

I am not yet sufficiently familiar with this area to offer an informed opinion.

If confirmed, I would work to understand the Program of Comprehensive Assistance for Family Caregivers, assess any training or knowledge gaps, and ensure that Veterans Law Judges, attorneys, and staff have the resources necessary to issue fair, accurate, and consistent decisions.
As with any new area of responsibility, I would expect ongoing training, quality review, and careful assessment of operational needs to help ensure that caregiver appeals are handled fairly and consistently.

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tinnitus, a central nervous condition, to hearing loss, a disability from damage to an organ of special sense (the ear) is not a valid comparison.") (citing Schedule for Rating Disabilities: Evaluation of Tinnitus, 68 Fed. Reg. 25822 (May 14, 2003) (codified at 38 C.F.R. § 4.87 pt. 6260)).

Questions for the Record
Nomination Hearing of Maria Lopez
For Chairman of the Board of Veterans Appeals
From Ranking Member Richard Blumenthal

1. VA's efforts to reduce the claims backlog have resulted in a corresponding increase in appeals. The significant increase in workload at the Board has left employees with insufficient time to conduct *de novo* reviews of appeals, as required by law - increasing the likelihood of legal or factual errors by Board attorneys and decreasing employee confidence in board leadership.

   If confirmed, how will you ensure the board is properly staffed, funded, and supportive of its workforce?

   Senator, if confirmed, I plan to initiate a review of Board capabilities to assess resources and improvements the Board may need to provide veterans with timely, clear and legally sound decisions. As part of this initial assessment, I will examine staffing and attrition data, workload trends and projections, training, and technology needs.

   Based on the findings of that assessment, I will communicate any needs to the Secretary and other appropriate VA offices to help address them. I have seen through public annual reports and appropriations that Congress has been supportive of Board needs in the past and I will do everything I can to continue fostering Congressional trust in any resource requests we make. As a former U.S. Attorney and Army legal officer, I understand the responsibility to use public resources effectively while identifying what is needed to accomplish the mission.

   Supporting the Board's incredible workforce requires listening, setting clear expectations, and responsive leadership. It also means ensuring that Board personnel have the training and equipment to perform their duties in a timely fashion and produce quality decisions. If confirmed, I will foster an environment in which BVA employees can raise concerns and receive meaningful responses and solutions from leadership.

2. AFGE surveyed one-third of BVA attorneys, and found that:

   97% said current performance standards increase the likelihood of errors.

   93% said there is not enough time to review each case *de novo*.

   92% said performance standards sacrifice quality legal analysis for speed and quantity.

   81% had "no confidence in senior Board leadership."

If confirmed, how do you plan to reform BVA's performance standards to ensure quality performance and job satisfaction from its attorneys?

If confirmed, I will review the Board's performance standards as part of my initial assessment referenced above. This review will include an evaluation of existing standards, current workload capacity, judge feedback on the quality of draft decisions presented to them, an evaluation of quality review processes, and any available quality review metrics or findings related to legal or procedural errors in Board decisions. This would include examining quality review findings or reports related to the reasons for court remands to identify opportunities for improvement. Of course, my review will include seeking feedback and input from both Board employees and external stakeholders.

If I identify standards or practices that require change to better serve Veterans, I will work to revise them consistent with applicable law. The Board's workforce is an invaluable resource and supporting them will be a top priority for me if I'm fortunate enough to be confirmed.

Senator Sheehy
Questions for the Record
Senate Veterans' Affairs Committee
Pending Nominations
September 23, 2026

Questions for Ms. Maria Lopez

1. My office has been advocating for Mr. Bo Reichenbach, a constituent and friend of mine who sustained catastrophic injuries from an IED blast in Afghanistan in 2012 that resulted in bilateral above-the-knee amputations, 160+ surgeries, TBI, nerve damage that prevents the use of prosthetics, and upper body joint degradation due to overuse. Bo was denied R-2 level Special Compensation despite clear medical documentation supporting the claim.

- "Given cases like Bo's, how would you ensure that the Board painstakingly reviews our catastrophically injured veterans' cases and fairly evaluates the totality of the evidence when determining eligibility for the appropriate levels of Special Monthly Compensation?"

As I testified during my confirmation hearing, the opportunity to serve Veterans like Mr. Reichenbach is why I was so honored the President chose to nominate me for this important position. The circumstances you describe underscore the importance of careful, individualized review in every Veteran's case, especially if they seek to appeal a decision to the Board of Veterans' Appeals. VA's statutory "duty to assist" and "benefit of the doubt" rules were originally established at the Board of Veterans' Appeals when it was first created in 1933.

Those rules – imposed by Presidential Executive Order – proved so important when giving fresh and final Board decisions that Congress later codified them to apply to all of VA at each level of the claims and appeals processes. If I am fortunate enough to be confirmed for this position, I will do everything within my authority to ensure these, and other legal requirements are uniformly applied to the individual facts and circumstances of each case that comes before the Board.

While the Board must apply the law to the unique set of facts each veteran has, it must also clearly explain its reasons or bases for any findings of fact or law in cases where the relief sought cannot be granted. Veterans deserve no less and I will be tireless in ensuring the Board meets these obligations.

2. Veterans in rural states like Montana rely on Care in the Community to ensure our veterans have access to timely medical attention, including fair and independent evaluations for disability claims.

- How will you establish procedures that appropriately recognize the evidence from community care providers who have direct and sometimes longstanding relationships with our catastrophically injured veterans and who have the most comprehensive understanding of their patients' functional limitations and ongoing care needs?

Community care providers play an important role in providing healthcare to veterans, especially in rural states like Montana. A provider who has treated a veteran over time – and their corresponding records – may offer valuable insight into how the veteran's condition affects daily life, how it has changed, and what ongoing care may be needed.

If confirmed, I will review the Board's process to ensure these records are obtained, if not already part of the claims file, and appropriately considered.

UNITED STATES SENATE

COMMITTEE ON VETERANS' AFFAIRS

ROOM 412 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510
Telephone: (202) 224-9126

QUESTIONNAIRE
FOR PRESIDENTIAL NOMINEES

The Rules of the U.S. Senate Committee on Veterans' Affairs require that a Presidential nominee whose nomination is referred to the Committee submit, on a form approved by the Committee, a sworn statement concerning his or her background and financial interests, including the financial interests of the nominee's spouse and children living in the nominee's household. The Committee form is in two parts:

(A) Information concerning the employment, education, and relevant background of the nominee, which is made public; and

(B) Information concerning the financial and other background of the nominee, which is made public only when the Committee determines that such information bears directly on the nominee's qualifications to hold the position to which the individual is nominated.

Committee action on a nomination, including hearings or a meeting to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits this form unless the Chairman, with the concurrence of the Ranking Minority Member, waives the waiting period.
In order to assist the Committee in its consideration of nominations, the Committee requests that each nominee complete the attached Questionnaire for Presidential Nominees. The notarized original and any supplemental information should be delivered to:

Committee on Veterans' Affairs
United States Senate

Room 412, Russell Senate Office Building
Washington, D.C. 20510

Attention: Chief Clerk

Revised January 2025

PART I: ALL OF THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated

Name of Position	Date of Nomination
Chair, Board of Veteran's Appeals	June 1, 2026

Current Legal Name

First Name	Middle Name	Last Name	Suffix
Maria	Chapa	Lopez	

Addresses

Residential Address (do not include street address)	Office Address (include street address)
[redacted]	Street:
City: State: Zip:	City: State: Zip:
Tampa Florida 33625	

Other Names Used

First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)

Maria	Socorro Lourdes	Chapa	X	Est 04/1958	☐	Est 06/2021	☐
Maria	SL	Chapa	X	Est 04/1958	☐	Est 06/2021	☐

Birth Year and Place

Year of Birth (Do not include month and day)	Place of Birth
1958	Chicago, Illinois

Marital Status

Check All That Describe Your Current Situation:

Never Married	Married	Separated	Annulled	Divorced	Widowed
☐	X	☐	☐	☐	☐

Spouse's Name
(current spouse only)

Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Joseph	Leonard	Lope	

Spouse's Other Names Used
(current spouse only)

First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
					Est ☐	Est ☐
					Est ☐	Est ☐

Children's Names (if over 18)

First Name	Middle Name	Last Name	Suffix
Olivia	Rae	Lopez	

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college/ correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
University of Texas, El Paso	University	Est 09/1976 ☐	Est 08/1979 ☐ Present ☐		
University of Texas, Austin	University	Est 09/1979 ☐	Est 05/1980 ☐ Present ☐	B.A.	May 1980
South Texas College of Law	Law school	Est 01/1983 ☐	Est 12/1986 ☐ Present ☐	J.D.	Dec. 1986
U.S. Army Judge Advocate School	Military School	Est 08/1996 ☐	Est 05/1997 ☐ Present ☐	LL.M.	May 1997

☐

3. Employment

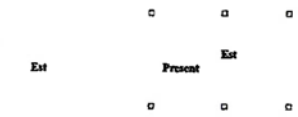
(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other federal employment, State Government (Non-federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
Self-employment - consulting work	Self-employed- worked from home	Legal and Maritime Consultant	Tampa, Florida	Est ☐ March 2021	Est ☐ November 2025 Present ☐
United States Attorney, Middle District of Florida	Department of Justice	United States Attorney	Tampa, Florida	Est ☐ January 2018	Est ☐ February 2021 ☐

Deputy Attache at U.S. Embassy in Mexico City	Department of Justice	Deputy Attache	Mexico City, Mexico	April 2016 Est ☐	January 2018 Est ☐
Assistant United States Attorney	Department of Justice	Assistant United States Attorney	Tampa, Florida	April 2000 Est ☐	April 2016 Est ☐
United States Army JAG Corps	United States Army	Senior Defense Counsel	Fort Stewart Georgia	July 1999 Est ☐	April 2000 Est ☐
United States Army JAG Corps	United States Army	Deputy Chief Counsel - DSJA	Aberdeen Proving Ground	May 1997	June 1999
United States Army JAG Corps	United States Army	Civil Litigation Attorney	Arlington, Virginia	June 1994	May 1996
United States Army JAG Corps	United States Army	Law Clerk – US Army Court of Criminal Appeals	Falls Church, Virginia	October 1992	June 1994
United States Army JAG Corps	United States Army	Appellate Attorney	Falls Church, Virginia	April 1992	October 1992
United States Army JAG Corps	United States Army	Defense Counsel	Federal Republic of Germany	March 1989	April 1992
Environmental Claims Adjuster	Traveler's Insurance Company	Environmental Claims Adjuster	Houston, Texas	August 1987	December 1988
Law Clerk	Law Offices of Freeman Bullock	Law clerk	Houston, Texas	June 1986	July 1987
Law Clerk	Law Offices of Ed Hennessey	Law Clerk	Houston, Texas	September 1985	May 1986
Law Clerk	Law Offices of Charlie Medlin	Law Clerk	Houston, Texas	May 1984	April 1985
Legal Secretary	Ector County Attorney's Office	Legal Secretary	Odessa, Texas	February 1981	December 1982
Receptionist	Houston Methodist Hospital Radiology	Receptionist	Houston, Texas	June 1981	December 1981
File Clerk	University of Texas Health Center	File Clerk	Austin, Texas	October 1979	May 1981

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere. N/A

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
		Est ☐	Present ☐ Est ☐
		Est ☐	Present ☐ Est ☐



4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

November 3, 2022 - Tampa Hispanic Bar, Judge E.J. Salcines, Spirit of Tampa Award

March 17, 2021 - USCG Distinguished Public Service Award for notable service and contributions to the advancement of the missions and goals of the USCG

June 15, 2018 – (EOUSA) Director's Award for Superior Performance by a Litigation Team

December 5, 2017 - (CRM) Criminal Division Assistant Attorney General's Award For Exceptional Service – Fallen Hero

February 9, 2017 - (MDFL) OCDETF Award for Maritime Interdiction Efforts in connection with Panama Express South Strike Force

July 18, 2016 - (NDDS) OCDETF Award for the El Borrador case involving the prosecution of a transnational drug organization

June 14, 2016 – USCG Distinguished Public Service Award for significant number of maritime drug interdiction cases prosecuted with PANEX from September 2014-October 2015

July 20, 2016 - DEA Director's Award for Outstanding Group Achievement for work on significant money laundering case, "White Lines," affecting transnational drug organizations

September 2010 – Middle District of Florida United States Attorney's Award – recognized for selfless assistance to the office and colleagues

September 2003 – Certificate of Appreciation presented by the Drug Enforcement Administration

March 15, 2000 - Awarded Department of the Army Commendation Medal for Exceptionally Meritorious Service

May 28, 1999 - Awarded Department of the Army Commendation Medal for Exceptionally Meritorious Service

April 5, 1996- Awarded Department of the Army Commendation Medal for Exceptionally Meritorious Service

May 23, 1994 – Awarded Department of the Army Achievement Medal for Outstanding Achievement

May 6, 1992 – Awarded Department of the Army Commendation Medal for Exceptionally Meritorious Service

May 1, 1986 – recognized for distinguished service as Assistant Editor of the South Texas Law Review

5. Memberships

List all memberships held in professional, social, business, fraternal, scholarly, civic, charitable, or other organizations in the last ten years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax-deductible donation of $1,000 or less, Parent-Teacher Associations, or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate)	Position(s) Held

Sister Cities of Tampa	2023- present	Member
Federalist Society	2018 – present	Member
Goldburg/Cacciatori Inn of Court	2010 – 2016	Member
Hillsborough Association of Women Lawyers	2012-2016	Member
Florida Association of Women Lawyers	2012-2016	Member
Tampa Hispanic Bar Association	2010 – present	Member
Federal Bar Association	2010 - 2021	Member
South Texas College of Law Alumni Association	2003 - present	Member

☐

6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office? No.

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere. None

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution
Russel Coleman – AG – Kentucky	$2200	2025
Christina Nolan – Senate Race - Vermont	$1000	2022

7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles or blog posts published on the Internet. None.

Title Publisher Date(s) of Publication

8. Public Statements

(A) List any testimony, official statements or other communications, including those made on the Internet including on social media or other digital content sites, relating to matters of public policy that you have issued or provided or that others presented on your behalf to public bodies or officials.

Medium	Date	Title / Description	Venue / Outlet / Audience	Place	Public Policy Topic	Notes / Relevance
Official statement	June 2026 article referencing earlier remarks	Statement praising anti-human-trafficking enforcement effort	News / public safety coverage	Florida	Human trafficking; victim protection; criminal enforcement	Later coverage quotes her public remarks that perpetrators would be pursued aggressively and that partners supporting victims would continue to receive support.
Official statement	February 26, 2021	Maria Chapa Lopez Announces Resignation as United States Attorney for the Middle District of Florida	U.S. Attorney's Office, Middle District of Florida / Department of Justice	Middle District of Florida / DOJ website	Administration of justice; federal law enforcement leadership	Official resignation statement issued in her capacity as U.S. Attorney; includes comments on her service, office mission, and law-enforcement partnerships.
Official statement	January 5, 2021	Statement concerning Fort Myers physician civil settlement resolving fraud allegations	HHS OIG / U.S. Attorney's Office release	Fort Myers, Florida	Health care fraud; protection of Medicare and Medicaid	She was quoted emphasizing protection of public health programs and accountability in False Claims Act enforcement.
Official statement	December 2020	Statement on DOJ investigation into systemic sexual abuse at Lowell Correctional Institution	Press coverage of DOJ civil rights investigation	Florida	Civil rights; prison conditions; sexual abuse investigation	Coverage quoted her as describing the investigation as a first step toward ending abuse at the institution.
Official	February 25,	Statement	Coverage citing	Middle	Domestic	News coverage

statement	2020	regarding charges against Atomwaffen members accused of threatening journalists and Jewish people	U.S. Attorney for the Middle District of Florida	District of Florida	terrorism; hate crimes; public safety	quoted her as stating that the arrests sent a strong message that the Department of Justice would address these threats aggressively.
Official statement	January 27, 2019	Statement concerning East Coast Stepping Stones civil settlement	Department of Defense OIG / U.S. Attorney's Office release	Jacksonville, Florida	Federal program integrity; fraud enforcement	She was identified as announcing a settlement and speaking on enforcement of fraud laws affecting public funds.
Official statement	2018-2021	Public statements issued as U.S. Attorney in DOJ and USAO press releases concerning violent crime, opioid trafficking, health care fraud, child exploitation, immigration offenses, and civil rights enforcement.	U.S. Attorney's Office, Middle District of Florida / Department of Justice	Middle District of Florida; distributed online	Criminal justice; public safety; opioid enforcement; fraud prevention; civil rights	The official DOJ biography confirms that she served as U.S. Attorney from 2018 to 2021, during which she acted as the chief federal law enforcement officer for the district and publicly announced enforcement actions through official channels.
Interview / profile	November 10, 2025	Veteran Maria Chapa Lopez '86: Service and Leadership	South Texas College of Law Houston	Houston, Texas	Public service; legal career; leadership	Institutional alumni profile presents direct biographical and professional remarks attributable to her; useful to disclose as an interview-style publication appearance.
Interview / quoted media	December 2020	Coverage of investigation into systemic sexual abuse at Lowell Correctional Institution	*Orlando Weekly*	Orlando, Florida	Civil rights; prison oversight	The article quoted her in connection with a major public civil rights investigation.
Interview / quoted media	February 25, 2020	Coverage of Atomwaffen prosecution	*Homeland Security Today*	Online / national security press	Domestic terrorism; hate-based threats	National-security coverage quoted her public comments regarding the prosecution.
Interview	August 29, 2018	Profile and interview concerning her appointment as U.S. Attorney and prior work on transnational drug cases	*Tampa Bay Times*	Tampa Bay, Florida	Federal prosecution; drug trafficking; leadership	Newspaper coverage profiled her background and appointment, reflecting interview-based reporting around the start of her Senate-confirmed tenure.
Interview /	July 8, 2018	Coverage of	*Jacksonville*	Jacksonville,	International	Legal press

profile		DOJ recognition for work in Mexico City	*Daily Record*	Florida	prosecution; federal legal service	coverage discussed her work and recognition, serving as a public-facing profile item relevant to interview or quoted-media disclosure.

(B) List any speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the dates and places where such speeches or talks were given.

Medium	Date	Title / Description	Venue / Outlet / Audience	Place	Public Policy Topic	Notes / Relevance
Speech / training talk	2025 profile discussing later career activity	Training young lawyers and judges across Latin America through work with the United Nations	South Texas College of Law Houston alumni profile	Latin America, specific venues not stated publicly in source	Rule of law; legal training; international public service	The law-school profile states that she worked throughout Latin American training lawyers and judges indicating public-facing lectures or training talks, though the source does not list exact dates and venues.
Speech	October 2, 2018	Remarks at DOJ-AHEAD Hispanic Heritage Month event	DOJ-AHEAD event	Washington, D.C.	Public service; diversity in the legal profession	A contemporaneous account states that she delivered remarks in connection with DOJ Hispanic Heritage Month programming.
Speech	October 1, 2018	Keynote address at the 2018 DOJ Hispanic Heritage Month Observance Program	Department of Justice Hispanic Heritage Month Observance Program	Great Hall, Department of Justice, Washington, D.C.	Public service; Hispanic heritage; justice system leadership	DOJ records state that Maria Chapa Lopez delivered the keynote address at this observance program.
Speech / public remarks	June 15, 2018 recognition event referenced in July 8, 2018 coverage	Recognition tied to work in Mexico City on an international prosecution matter	Department of Justice Director's Awards coverage	Washington, D.C. event referenced by Jacksonville Daily Record	International justice cooperation; transnational crime	Coverage identified her among DOJ personnel recognized for work in Mexico City; this supports a public appearance connected to federal justice work, though the available source does not provide a speech transcript.

(C) List all interviews you have given to newspapers, magazines or other publications, and radio or television stations (including the dates of such interviews).

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Medium	Date	Title / Description	Venue / Outlet / Audience	Place	Public Policy Topic	Notes / Relevance

Interview / profile	November 10, 2025	Veteran Maria Chapa Lopez '86: Service and Leadership	South Texas College of Law Houston	Houston, Texas	Public service; legal career; leadership	Institutional alumni profile presents direct biographical and professional remarks attributable to her; useful to disclose as an interview-style publication appearance.
Interview / quoted media	December 2020	Coverage of investigation into systemic sexual abuse at Lowell Correctional Institution	*Orlando Weekly*	Orlando, Florida	Civil rights; prison oversight	The article quoted her in connection with a major public civil rights investigation.
Interview / quoted media	February 25, 2020	Coverage of Atomwaffen prosecution	*Homeland Security Today*	Online / national security press	Domestic terrorism; hate-based threats	National-security coverage quoted her public comments regarding the prosecution.
Interview	August 29, 2018	Profile and interview concerning her appointment as U.S. Attorney and prior work on transnational drug cases	*Tampa Bay Times*	Tampa Bay, Florida	Federal prosecution; drug trafficking; leadership	Newspaper coverage profiled her background and appointment, reflecting interview-based reporting around the start of her Senate-confirmed tenure.
Interview / profile	July 8, 2018	Coverage of DOJ recognition for work in Mexico City	*Jacksonville Daily Record*	Jacksonville, Florida	International prosecution; federal legal service	Legal press coverage discussed her work and recognition, serving as a public-facing profile item relevant to interview or quoted-media disclosure.

9. Agreements or Arrangements

☐ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. None.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits. None

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)
None		

10. Lobbying

Have you ever registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).
No.

11. Testifying Before the Congress

(A) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such Committee? Yes.

(B) Do you agree to provide such information as is requested by such a committee in a timely and accurate manner? Yes.

Nomination Material for

ROBERT R. FLECK

Prepared Statement of Robert R. Fleck
Nominee to be a Judge of the United States Court of Appeals for Veterans Claims
September 23, 2026

Good afternoon, Chairman Moran, Ranking Member Blumenthal, and distinguished Members of the Committee, thank you for the opportunity to appear today to for your consideration to be a Judge for the Court of Appeals for Veterans Claims. Thanks to President Trump for nominating me for consideration. Thanks to Mr. Collins, the Secretary of Veterans Affairs, for the support. If confirmed I will make every effort to provide veterans with the benefits they have earned in a timely manner.

My professional and personal experiences have thoroughly prepared me for this role. Over my 46 years as an attorney and 30-year career in federal service, I have built a legacy of transformative leadership and unwavering dedication to advancing the interests of soldiers and veterans.

I currently serve as Deputy General Counsel in the Department of Veterans Affairs. Over the course of my legal career, I have represented individuals, government entities, corporations, and federal government agencies.

I have handled complex litigation, administrative law, and veteran-related cases. These experiences have provided me with a deep understanding of legal processes as well as the unique challenges veterans face. My qualifications enable me to approach each case with expertise, and a strong commitment to justice.

Recently, as Deputy General Counsel for the VA, I have led efforts to improve medical care access for veterans and improve many systems serving veterans.

This year will be my thirtieth year of government service. Throughout my career, I have been guided by a singular focus: serving those who serve our country.

I have profound respect for those who have served our country. Throughout my career, working alongside soldiers and veterans has fostered in me patience, and a strong sense of duty. These qualities, combined with my legal experience, drive my desire to serve as a judge and ensure fair outcomes for those who have dedicated themselves to our nation.

I look forward to your questions.

Thank you.

Pre-Hearing Questions for Robert Fleck
Nominee to be a Judge of the
United States Court of Appeals for Veterans Claims
From Senator Jerry Moran
Chairman, Senate Committee on Veterans' Affairs

September 3, 2026

1. Please detail the professional and personal experiences that you believe prepared you to serve as a Judge of the United States Court of Appeals for Veterans Claims (CAVC).

RESPONSE: My preparation for serving as a Judge of the United States Court of Appeals for Veterans Claims (CAVC) stems from a combination of professional and personal experiences. Professionally, I have dedicated my legal career to public service, including roles in both government and private practice where I handled complex litigation, administrative law, and veteran-related cases. My experience working with federal and state statutes and regulations has honed my ability to interpret and apply the law with precision, while my background in appellate advocacy has equipped me to analyze nuanced legal issues and draft thorough, well-reasoned opinions.

Personally, my commitment to veterans' issues is rooted in a deep respect for those who have served our country. Working with and for the soldiers, and with and for the veterans, I have cultivated empathy, patience, and a strong sense of duty—qualities essential for ensuring justice and fairness in the adjudication of veterans' claims. Together, my legal expertise and personal dedication have prepared me to uphold the integrity and mission of the CAVC.

2. What is the appropriate role of CAVC in making certain that the Department of Veterans Affairs (VA) provides veterans, caregivers, survivors, and other claimants the benefits and services Congress has authorized, while remaining an impartial appellate court rather than a policymaking body?

RESPONSE: The United States Court of Appeals for Veterans Claims (CAVC) plays a critical role in ensuring that the Department of Veterans Affairs (VA) delivers the benefits and services authorized by Congress to veterans, caregivers, survivors, and other claimants. As an appellate court, the CAVC is responsible for reviewing Board of Veterans Appeals decisions to determine whether they comply with the law and uphold veterans' rights. The court achieves this by interpreting statutes and regulations, assessing whether the VA has properly applied them, and providing remedies when errors or injustices occur. Importantly, the CAVC maintains its impartiality by confining its actions to the judicial review of individual cases rather than engaging in policymaking. It does not create new policies or expand benefits beyond what Congress has authorized but instead ensures that the VA follows existing laws and regulations fairly and consistently. This careful balance allows the CAVC to protect claimants' interests while preserving its integrity and independence as a neutral judicial body.

3. Please describe your understanding of the purpose, jurisdiction, statutory responsibilities, and organizational structure of CAVC, including the Court's place between the Board of Veterans' Appeals and the United States Court of Appeals for the Federal Circuit. If confirmed, how would you contribute to the effective administration of the Court?

RESPONSE: The CAVC was established to provide an independent judicial forum for reviewing decisions made by the Board of Veterans' Appeals. Its central purpose is to ensure that veterans, caregivers, survivors, and other claimants receive the benefits and services Congress has authorized, while safeguarding their rights through impartial legal review. The Court's mission is to uphold fairness and justice in veterans' claims, offering claimants a venue to challenge adverse decisions by the VA.

The CAVC exercises jurisdiction over final decisions of the Board of Veterans' Appeals, reviewing cases for conformity with federal statutes, regulations, and constitutional standards. Its statutory responsibilities include interpreting and applying laws governing veterans' benefits, resolving legal disputes, and remanding cases for further action when errors are identified. The Court ensures adherence to Congressional intent without expanding or restricting benefits beyond what is authorized.

Organizationally, the CAVC is composed of a Chief Judge and several Associate Judges appointed for fixed terms. The Court operates as a collegial body, hearing cases both individually and en banc, and is supported by professional staff who assist with legal research and case management. This structure promotes efficient adjudication and consistency in legal interpretation.

Positioned between the Board of Veterans' Appeals and the United States Court of Appeals for the Federal Circuit, the CAVC serves as the primary appellate court for veterans' claims. Decisions of the CAVC can be appealed to the Federal Circuit, which reviews legal questions and ensures uniformity in the application of veterans' law across the federal judiciary.

If confirmed as a Judge of the CAVC, I would contribute to the Court's effective administration by drawing on my experience in appellate advocacy, administrative law, and veteran-related litigation. My dedication to public service and familiarity with federal statutes would enable me to approach each case with diligence, integrity, and respect for the rights of claimants. I am committed to fostering a collaborative environment, upholding judicial impartiality, and supporting the Court's mission to deliver timely, well-reasoned decisions that advance justice for veterans and their families.

4. What do you see as the role of this Committee, specifically, and congressional oversight, in general, with respect to CAVC?

RESPONSE: The role of this Committee, and congressional oversight more broadly, is fundamental in maintaining the accountability and effectiveness of the CAVC. The Committee ensures that the CAVC adheres to its statutory mandate, operates transparently, and remains responsive to the needs of veterans, caregivers, survivors, and other claimants. By conducting hearings, reviewing judicial performance, and monitoring the implementation of veterans' law,

the Committee helps safeguard the integrity of the appellate process and protect claimants' rights.

Congressional oversight also serves to evaluate whether the Court is interpreting and applying statutes as intended by Congress, without overstepping its judicial role or engaging in policymaking. This oversight fosters public trust in the Court and ensures that its decisions reflect both legal standards and the broader goals of veterans' legislation. Ultimately, the Committee's involvement promotes a balanced system where judicial independence is preserved, but accountability and responsiveness to Congressional intent are maintained.

5. If the Secretary of Veterans Affairs, the White House, the Office of Management and Budget, the Office of Personnel Management, or any other official or private entity contacted you about a pending case, sought a commitment about how you would decide a case or category of cases, or issued a directive that you believed violated the law or threatened the Court's decisional independence, what would you do

RESPONSE: If contacted by the Secretary of Veterans Affairs, the White House, the Office of Management and Budget, the Office of Personnel Management, or any other official or private entity regarding a pending case, or if asked for a commitment about how I would decide a case or category of cases, I would firmly decline to engage in any such discussions. It is essential to preserve the integrity and independence of the United States Court of Appeals for Veterans Claims by avoiding improper communications, resisting external influence, and refusing to provide assurances about case outcomes.

If issued a directive that I believed violated the law or threatened the Court's decisional independence, I would report the incident through appropriate judicial channels and ensure that the matter was addressed in accordance with judicial ethics and federal law. Upholding impartiality and adhering strictly to legal standards are fundamental to maintaining public trust and the Court's mission to deliver fair, unbiased decisions for veterans, caregivers, survivors, and other claimants.

6. How has your background equipped you to serve in this role as a judge on the United States Court of Appeals for Veterans Claims?

RESPONSE: My background has provided me with a strong foundation in appellate advocacy, administrative law, and veteran-related litigation, which are directly relevant to the responsibilities of a judge on the CAVC. Through years of public service and legal practice, I have developed a thorough understanding of federal statutes governing veterans' benefits, as well as the procedural and substantive issues that arise in these cases. This experience has honed my ability to analyze complex legal questions, apply statutory and regulatory frameworks with precision, and approach each matter with fairness and integrity.

Additionally, my commitment to upholding judicial impartiality and fostering a collaborative environment aligns with the Court's mission to deliver timely, well-reasoned decisions for veterans and their families. I am dedicated to ensuring that the Court remains responsive to the needs of claimants while safeguarding the independence and transparency essential to its role in

the federal judiciary. These qualities, combined with my familiarity with veterans' law and appellate processes, equip me to serve effectively and contribute meaningfully to the Court's continued excellence.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

RESPONSE: In cases of first impression, where no controlling precedent exists, I would turn to several sources for persuasive authority. These include analogous decisions from other federal courts, the legislative history and statutory purpose underlying the relevant laws, and authoritative treatises or scholarly commentary. Additionally, I would closely examine the text and structure of the statute at issue, considering its context within the broader framework of veterans' law.

The guiding principles for deciding such cases would be fidelity to Congressional intent, adherence to established judicial methods of statutory interpretation, and respect for the balance between judicial independence and accountability. I would employ a methodical approach: analyzing the plain language of the statute, reviewing its legislative history, and considering the practical implications of various interpretations. My decisions would be informed by the Court's mission to deliver fair, timely, and well-reasoned outcomes that advance justice for veterans and their families, always ensuring impartiality and transparency throughout the process.

8. At any point during the process that led to your nomination, did you make any representation or commitment to anyone, including officials at the White House, VA, the Department of Justice, or any outside organization, as to how you would handle a particular case, legal issue, or category of claims if confirmed? Were you asked for your views on any pending or recently decided veterans law matter? If so, please explain fully.

RESPONSE: No, at no point during the nomination process did I make any representation or commitment to anyone—including officials at the White House, VA, Department of Justice, or any outside organization—regarding how I would handle a particular case, legal issue, or category of claims if confirmed. I was not asked for my views on any pending or recently decided veterans law matters. I have consistently upheld the principles of judicial independence and impartiality throughout the process, ensuring that I avoided any improper communications or assurances about case outcomes.

If I had been approached for such commitments or discussions, I would have declined to engage, in accordance with judicial ethics and the need to preserve the integrity of the CAVC. My approach remains steadfast in resisting external influence and maintaining strict adherence to legal standards and the Court's mission.

9. How would you describe your judicial philosophy? When interpreting law and regulation, what roles should be played by statutory or regulatory text, structure, context, ordinary meaning, related provisions, precedent, history, statutory purpose, and legislative history?

RESPONSE: My judicial philosophy centers on a commitment to impartiality, fidelity to the law, and respect for the balance between judicial independence and accountability. When interpreting statutes and regulations, I believe the starting point must always be the statutory or regulatory text itself, giving careful consideration to its ordinary meaning as understood at the time of enactment. The structure and context of the provision are equally important, as they help clarify the relationships between individual sections and facilitate a holistic understanding of the law.

Related provisions and precedent play a key role in ensuring consistency and stability in legal interpretation, while history and statutory purpose can illuminate the broader objectives Congress or the regulatory body sought to achieve. Legislative history may also provide valuable insight in cases where ambiguity remains after considering the text, structure, and context. My approach is methodical: I analyze the plain language, review relevant precedents, and assess the practical implications of various interpretations, always striving to advance justice for veterans and their families in accordance with Congressional intent and established judicial methods.

10. Judges must decide cases based on the law and the record rather than their preferred policy outcomes. How would you separate any policy views, prior advocacy positions, or views developed in government or private practice from your responsibilities as a Judge?

RESPONSE: As a Judge, I would recognize the critical importance of setting aside any personal policy views, prior advocacy positions, or perspectives formed through government or private practice. My decision-making process is anchored in the law and the factual record before the Court, not in my own preferences or beliefs. I approach each case with an open mind, carefully evaluating the arguments and evidence presented, and applying the relevant statutes, regulations, and precedents in a manner that is faithful to Congressional intent and judicial ethics.

This commitment requires constant self-awareness and discipline to ensure impartiality. I deliberately refrain from allowing past experiences or opinions to influence my legal analysis and conclusions. By focusing exclusively on the governing law and the specific facts of each case, I uphold the integrity, independence, and fairness expected of the judiciary, ensuring that all parties receive a neutral and unbiased hearing consistent with the Court's mission.

11. What qualities of judicial temperament do you believe are essential for service on CAVC?

RESPONSE: Essential qualities of judicial temperament for service on the CAVC include patience, open-mindedness, and the ability to listen thoughtfully to all parties. Integrity and humility are vital, enabling a judge to approach each case without bias and with respect for the litigants and the law. A strong sense of fairness ensures that decisions are made objectively, while compassion allows for an understanding of the unique challenges veterans and their families may face.

Additionally, decisiveness and diligence are important, as the Court must deliver timely, well-reasoned judgments. Judicial temperament also encompasses the ability to remain calm under

pressure, maintain impartiality, and uphold ethical standards, all of which are crucial for preserving public trust in the Court's integrity and mission. These qualities help ensure that the Court continues to serve veterans and their families with excellence, transparency, and justice.

12. If confirmed, what steps would you take as an individual Judge and as a member of the Court to improve timeliness without sacrificing careful review, due process, or decision quality?

RESPONSE: If confirmed, I would prioritize streamlining internal processes and leveraging technology to enhance the efficiency of case management. As an individual Judge, I would commit to establishing clear timelines for drafting opinions and reviewing case materials, ensuring that each case receives thorough attention without unnecessary delay. I would also actively collaborate with colleagues to share best practices and identify bottlenecks that may hinder timeliness.

As a member of the Court, I would support initiatives that promote transparency in scheduling and foster open communication among judges and staff. This includes advocating for training programs focused on new legal developments and procedural innovations, as well as participating in regular reviews of Court procedures to identify areas for improvement. By balancing efficiency with careful review and due process, I aim to uphold the Court's commitment to delivering high-quality, timely decisions that serve veterans and their families with fairness and respect.

13. In Ingram v. Collins, 38 Vet. App. 130, CAVC held that, when the applicable diagnostic code and related rating provisions do not refer to medication, the Board must discount the ameliorative effects of medication when assigning a disability evaluation. On February 17, 2026, VA issued an interim final rule amending 38 C.F.R. 4.10 in response to Ingram. VA rescinded that rule ten days later, restored the prior regulatory text, and the Federal Circuit appeal was dismissed by agreement on March 30, 2026. Do you understand Ingram to remain binding CAVC precedent, and can you describe its holding?

RESPONSE: Yes, I understand Ingram v. Collins to remain binding precedent of the CAVC. The holding in Ingram establishes that, when the relevant diagnostic code and rating criteria do not mention medication, the Board must evaluate the severity of a veteran's disability without considering the positive effects of any treatment or medication. This ensures that veterans are rated based on the underlying condition, not the degree to which symptoms are alleviated by medical intervention.

Although the VA briefly amended 38 C.F.R. 4.10 in response to Ingram, the rule was rescinded, the prior regulatory text was restored, and the Federal Circuit appeal was dismissed. As a result, Ingram's principle remains the controlling interpretation for disability evaluations under such circumstances until further guidance is provided by higher courts or regulatory amendments. This approach promotes consistency and fairness in the adjudication of veterans' claims.

14. In Bufkin v. Collins, 604 U.S. 369, the Supreme Court held that the standard of review applicable to a challenge involving the benefit-of-the-doubt rule depends on whether the asserted error is legal or factual, and that VA's determination whether evidence is in approximate balance is predominantly factual and reviewed only for clear error. Is Bufkin binding precedent, and can you describe its holding

RESPONSE: Yes, *Bufkin v. Collins*, 604 U.S. 369, is binding precedent from the Supreme Court and must be followed by lower courts, including the CAVC. The holding in Bufkin clarifies that the standard of review applied to challenges involving the benefit-of-the-doubt rule depends on the nature of the asserted error: legal errors are reviewed de novo, while factual determinations are reviewed for clear error. Specifically, the Court determined that the VA's assessment of whether evidence is in approximate balance is fundamentally a factual question, and such findings should be upheld unless they are clearly erroneous. This distinction ensures proper deference to the VA's factual judgments while preserving rigorous oversight of legal interpretations.

15. The Court may consider petitions for extraordinary relief alleging that VA has unlawfully withheld or unreasonably delayed action. Please describe the legal standards governing mandamus, unreasonable delay claims, and enforcement of the Court's mandates. How would you preserve the extraordinary nature of mandamus while making certain that meaningful and effective relief are available when ordinary appellate review is inadequate?

RESPONSE: The legal standards governing mandamus in the CAVC require a petitioner to demonstrate that they have a clear and indisputable right to the relief sought, that the VA has a duty to act, and that there are no adequate alternative remedies available. Mandamus is reserved for extraordinary circumstances where ordinary appellate review cannot provide sufficient relief. For claims involving unreasonable delay, the Court typically evaluates whether the VA's actions are so egregiously slow that they amount to a denial of due process, considering factors such as the length of the delay, the complexity of the matter, and the harm caused to the petitioner.

Enforcement of the Court's mandates is accomplished through orders compelling VA compliance, and the Court retains authority to issue further directives if necessary to ensure its judgments are implemented. To preserve the extraordinary nature of mandamus while ensuring meaningful and effective relief, I would carefully assess whether the petitioner has exhausted administrative remedies and whether the delay or failure to act is sufficiently severe to warrant extraordinary intervention. By applying a rigorous standard and reserving mandamus for truly exceptional cases, the Court can ensure it remains a potent tool for addressing urgent injustices, while maintaining its integrity and effectiveness when ordinary appellate review proves inadequate.

16. Please describe with particularity the process by which these questions were answered.

RESPONSE: I answered these questions through a careful review of binding legal precedent, relevant regulatory history, and authoritative guidance from the CAVC, the Supreme Court, and the VA. I analyzed the cited cases and regulatory actions in detail, ensuring accuracy and fidelity

to their holdings and procedural context. Each response was crafted to directly address the legal standard or principle in question, relying solely on the facts presented and the applicable law, without speculation or extraneous commentary.

Where necessary, I interpreted the procedural history and legal framework using established judicial reasoning and the language of the court decisions and regulations. This approach ensured that each answer reflected both the letter and spirit of the law while providing clear explanations tailored to the specific inquiries posed.

After receiving limited feedback from the Office of Legal Policy at the United States Department of Justice, I finalized my answers based on my own judgment and authorized the answers to be submitted to the Senate Veterans Affairs Committee.

17. Do these answers reflect your true and personal views?

RESPONSE: Yes, these answers accurately reflect my considered views based on a thorough and objective analysis of the legal principles, precedents, and regulatory guidance applicable to the questions posed. I have provided responses grounded in the relevant law and facts, free from personal bias or extraneous opinion, to ensure clarity and reliability for each inquiry.

Pre-Hearing Questions for the Record
Nomination Hearing of Robert Fleck for
Judge for the U.S. Court of Appeals for Veterans Claims
From Ranking Member Richard Blumenthal

1) Describe your professional background and qualifications to serve as a Judge on the U.S. Court of Appeals for Veterans Claims (CAVC) and explain why you are seeking this position.

RESPONSE: My preparation for serving as a Judge of the United States Court of Appeals for Veterans Claims (CAVC) stems from a combination of professional and personal experiences. Professionally, I have dedicated my legal career to public service, including roles in both government and private practice where I handled complex litigation, administrative law, and veteran-related cases. My experience working with federal and state statutes and regulations has honed my ability to interpret and apply the law with precision, while my background in appellate advocacy has equipped me to analyze nuanced legal issues and draft thorough, well-reasoned opinions.

Personally, my commitment to veterans' issues is rooted in a deep respect for those who have served our country. Working with and for the soldiers, and with and for the veterans, I have cultivated empathy, patience, and a strong sense of duty—qualities essential for ensuring justice and fairness in the adjudication of veterans' claims. Together, my legal expertise and personal dedication have prepared me to uphold the integrity and mission of the CAVC.

2) How do you approach statutory interpretation, and what methodology do you use to determine congressional intent when statutory language is ambiguous?

RESPONSE: When interpreting statutes and regulations, I believe the starting point must always be the statutory or regulatory text itself, giving careful consideration to its ordinary meaning as understood at the time of enactment. The structure and context of the provision are equally important, as they help clarify the relationships between individual sections and facilitate a holistic understanding of the law.

Related provisions and precedent play a key role in ensuring consistency and stability in legal interpretation, while history and statutory purpose can illuminate the broader objectives Congress or the regulatory body sought to achieve. Legislative history may also provide valuable insight in cases where ambiguity remains after considering the text, structure, and context. My approach is methodical: I analyze the plain language, review relevant precedents, and assess the practical implications of various interpretations, always striving to advance justice for veterans and their families in accordance with Congressional intent and established judicial methods.

3) What are your views on the relative roles of attorney/advocate representation versus pro se representation in veterans' claims?

RESPONSE: The relative roles of attorney or advocate representation versus pro se representation in veterans' claims are significant. Attorneys and advocates bring legal expertise, familiarity with complex statutes and regulations, and an understanding of procedural requirements that can help ensure veterans' claims are presented effectively and thoroughly. Their involvement often increases the likelihood that all relevant evidence and arguments are properly developed and articulated before the Court.

At the same time, pro se representation is common in veterans' claims due to the accessibility and informal nature of the process, and it is crucial that the Court remains attentive to the unique

challenges faced by self-represented claimants. Ensuring fairness and equal access to justice means providing support for pro se veterans, recognizing their service and respecting their right to be heard. Ultimately, the Court has a responsibility to balance procedural rigor with compassion.

4) What do you consider a reasonable timeframe for the Court to issue a decision in a given case?

RESPONSE: I consider a reasonable timeframe for the Court to issue a decision in a given case to be within 120 to 180 days from the completion of briefing, barring extraordinary circumstances. Timely resolution is important for veterans seeking benefits that needs to be balanced with the Court's obligation to issue thorough and well-reasoned decisions. Efficient case management and clear communication with parties can help ensure that the process remains both fair and expeditious.

5) If you believed a VA position reflected an incorrect interpretation of a statute — even though that position was consistent with long-standing agency practice — would you be willing to reverse it?

RESPONSE: If I believed a VA position reflected an incorrect interpretation of a statute or was inconsistent with binding precedent from the Supreme Court, I would be willing to reverse it, even if the interpretation were consistent with long-standing agency practice. If it appears necessary to disturb a precedent's interpretation of a regulation or agency position, I would consider the stare decisis factors laid out by the Supreme Court. *See Witkowski v. Collins*, 38 Vet.App. 459, 473-74 (2025) (citing *Janus v. Am. Federation of State, County & Mun. Emps., Council 31*, 585 U.S. 878, 917 (2018)). The Court's primary responsibility is to uphold the law as enacted by Congress, not to perpetuate agency interpretations that deviate from statutory requirements. While agency practice can provide valuable context and inform understanding, it cannot override clear legislative intent or statutory text. My approach would be guided by fidelity to the statute to ensure veterans receive the benefits and protections they earned and Congress intended.

6) Would the potential cost or disruption of overturning an established rule or practice factor into how you would adjudicate a case?

RESPONSE: Please see my answer to Question 5 regarding application of the *Janus* factors established by the Supreme Court. The duty of a Judge for the CAVC is to interpret and apply the law as written by Congress, ensuring that statutory requirements and legislative intent are faithfully upheld.

7) The claims process — from the initial application through an appeal to the Board of Veterans' Appeals — is designed to be non-adversarial and preferential to the claimant. That posture changes once a case reaches the CAVC, where review is de novo and more traditionally adversarial. What in your background has prepared you to navigate that shift? How would you approach reviewing cases de novo after they've moved through a system intentionally designed to favor the claimant?

RESPONSE: The transition from a non-adversarial, claimant-friendly process to the more adversarial, de novo review at the CAVC is a significant shift that requires both sensitivity and rigor. My background includes experience in both collaborative and adversarial legal environments, which has equipped me to appreciate the unique posture of the veterans' claims system and the demands of judicial review. I have worked extensively in settings where my role required balancing compassion for the parties with a commitment to thorough, impartial analysis.

When reviewing cases de novo at the CAVC, I would approach each matter with an understanding of the claimant's journey through an intentionally supportive process, while also

recognizing my duty to apply the law objectively and independently. I would carefully examine the record and arguments, ensuring that claimants continue to receive the benefit of the doubt where appropriate, but also that legal standards are faithfully applied. My method would be to respect the non-adversarial origins of the case, while embracing the responsibility to review in accordance with judicial principles.

8) Since the earliest days of judicial review of veterans' claims, courts have recognized that Congress intended VA to "fully and sympathetically develop the veteran's claim to its optimum." *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). Yet the claims process has moved increasingly toward mandatory forms and decisions that are fully or nearly fully automated. How do you view VA's duty to run a sympathetic, claimant-friendly process in an era of automation and AI? What would you expect of a veteran — particularly an elderly veteran — navigating this process, and what would you expect of VA?

RESPONSE: VA's duty to fully and sympathetically develop veterans' claims remains paramount, even as the process incorporates more automation and artificial intelligence. While these technologies can enhance efficiency and consistency, they must not come at the expense of individualized attention or claimant support. It is crucial that VA ensures automated systems are designed to be accessible, intuitive, and responsive to the unique needs of veterans, especially those who may struggle with technology or complex forms, such as elderly claimants.

I would expect a veteran—particularly an elderly veteran—to encounter clear guidance, user-friendly tools, and multiple avenues for assistance throughout the claims process. VA should offer support, whether through personal outreach, simplified instructions, or accessible help centers, so that no veteran is disadvantaged by automation. At the same time, VA must remain vigilant in monitoring automated decisions to ensure they are fair, accurate, and sympathetic to the claimant's circumstances. Technology should serve to enhance, not diminish, VA's commitment to a claimant-friendly process.

9) For decades, the VA benefits system has struggled with inadequate medical evidence, a problem that has worsened since VA outsourced most compensation and pension exams to private contractors. Despite a CAVC remand rate that typically runs 80% or higher — driven in large part by inadequate exams — there has been little improvement. What role can the Court play in driving meaningful improvement in the quality of evidence VA produces?

RESPONSE: When clear deficiencies exist in the record, the Court should identify and articulate clear opinions to guide VA. Ultimately, when appropriate, the Court could emphasize the importance of reliable medical evidence.

10) Veterans are increasingly turning to unaccredited companies that conceal their own involvement while pushing mass-produced, AI-generated claims submissions. VA has issued numerous cease-and-desist letters to such companies in recent years, largely ignored, in part because there are no meaningful penalties for this unauthorized practice. What role should the Court play in addressing unaccredited representation, particularly where the responsible parties avoid formally appearing on the record?

RESPONSE: Where responsible parties avoid appearing on the record, the Court may reexamine procedural safeguards and heightened review of questionable submissions, signaling to VA and claimants that unauthorized practices will not be tolerated. The Court can also recommend legislative or regulatory reforms.

11) Under the Supreme Court's 1994 decision in *Brown v. Gardner*, veterans' benefits statutes have historically been interpreted liberally in favor of veterans. This "pro-veteran canon" has come under

increasing criticism from strict textualists. Do you believe there remains an ongoing role for the pro-veteran canon in interpreting veterans' benefits statutes?

RESPONSE: While the push for textual precision is valuable, the ongoing application of the pro-veteran canon in VA helps maintain a fair and claimant-friendly process, especially given the challenges many veterans face when navigating the system. Ultimately, preserving this interpretive approach reinforces the government's commitment to supporting veterans and upholds the foundational principles behind veterans' benefits legislation.

12) In your committee questionnaire, you describe VA's historical reporting of veterans to NICS, based on the appointment of a fiduciary due to mental incapacity, as "improper" and you note that your work helped end that reporting entirely. Congress adopted the fiduciary-based reporting standard as the operative definition of "adjudicated as a mental defective" under the Gun Control Act. Veterans die by firearm suicide at significantly higher rates than the general population. Given that history, on what basis do you conclude that decades of reporting under that standard were improper, rather than a policy judgment that reasonable people could disagree with? Can you provide data or evidence supporting the "improper" characterization?

RESPONSE: The fiduciary appointment process in VA was never intended as a determination of dangerousness or criminal mental defect, but rather as a safeguard for financial management. This distinction is crucial: being assigned a fiduciary due to mental incapacity does not necessarily correlate with a risk of violence or suicide, yet the reporting mechanism treated it as such. This conflation resulted in blanket firearm prohibitions that were not evidence-based, disproportionately affecting veterans without individualized assessments.

Furthermore, the administrative process often lacked transparency and did not afford affected individuals due process to challenge the designation or its consequences. The policy lacked of clinical rigor and did not differentiate between financial incapacity and mental health risk, leading to an overly broad application.

a. Did anyone at VA or ATF raise concerns about the speed, thoroughness, or legal soundness of this reinterpretation, and if so, how were those concerns resolved?

RESPONSE: Publicly available records indicate that internal discussions did occur about the appropriateness and legal soundness of the 1998 interpretation.

13) You describe establishing a process for VA attorneys to file for guardianship on behalf of veterans in VA's acute care facilities who require longer-term treatment. Guardianship proceedings can result in a person losing control over significant civil rights, including the right to manage their own finances, and make medical decisions. What safeguards did you build into this process to ensure that VA — the same agency responsible for the veteran's care — does not have an inherent conflict of interest when initiating proceedings that could strip that veteran of their legal autonomy? What protections exist to ensure the veteran's wishes and rights are meaningfully represented in these proceedings?

RESPONSE: The appointment of a guardian is governed by state laws. The process in VA would only begin when it is determined a veteran in a VA facility is unable to make medical decisions. The process includes evaluations by qualified medical professionals. These assessments help ensure that the need for guardianship is based on objective clinical criteria, rather than administrative convenience or institutional bias.

Then, after a thorough search for a relative or an interested person who would be willing to be responsible for the alleged incompetent veteran, if the veteran discloses no one available or willing

to be a guardian, the VA could file a petition for a guardian to a state court. The state court judge can appoint an attorney to represent the alleged incompetent veteran. The process requires judicial oversight, with courts reviewing all evidence and hearing from all parties—including the veteran and their counsel—before making any guardianship determination.

VA is required to report any potential conflicts of interest to the court, and any guardian appointed is subject to reporting requirements and oversight by the court to prevent misuse of authority. These safeguards collectively help ensure that veterans' autonomy is preserved whenever possible, and that their legal rights and personal wishes are fully represented and protected during guardianship proceedings.

14) How does VA determine when a veteran has regained capacity such that a guardianship should be terminated or modified, and what recourse does a veteran or their family have if they believe a guardianship was wrongly imposed or has outlived its necessity?

RESPONSE: At any time, the veteran or a family member may petition the court to determine if guardianship should be vacated.

15) Given your opinion that VA's history of reporting veterans under fiduciary appointments to NICS was improper, how do you reconcile leading an initiative that expands VA's role in initiating guardianship proceedings, which can carry similar or greater consequences for a veteran's civil rights, with your stated concerns about VA overreach in the fiduciary/NICS context?

RESPONSE: Reconciling concerns about VA's historical fiduciary/NICS reporting context with initiatives expanding VA's role in guardianship proceedings requires a clear distinction between past practices without adjudications and current safeguards which would include independent adjudications. While the prior NICS reporting mechanism lacked individualized assessments and due process, the guardianship process has been deliberately structured to prioritize veterans' autonomy and legal rights. This includes mandatory independent medical evaluations and judicial oversight, all designed to prevent administrative convenience from outweighing clinical or legal necessity before filing a petition for a guardian.

16) A 2018 VA OIG report concluded that you engaged in nepotism, had a conflict of interest, improperly shared VA sensitive data, and made false statements to investigators. You subsequently sued the OIG under the Privacy Act, and in 2022 the district court found a genuine factual dispute as to whether the OIG's report omitted material exculpatory testimony from other witnesses. Given that litigation history, which specific findings in the OIG report do you continue to dispute, and which do you accept?

RESPONSE: Regarding the 2018 VA OIG report, I continue to dispute several of its specific findings, particularly those related to allegations of nepotism and conflict of interest. My position is that the report did not fully consider material exculpatory testimony from other witnesses, and other facts. This omission led to a district court finding in 2022 that there was a genuine factual dispute regarding whether critical evidence had been excluded, underscoring my challenge to the report's conclusions.

17) Separately from the litigation over the report's completeness, the OIG also found that you and your wife gave investigators an account of when VA information was shared with her that was contradicted by subpoenaed phone records. Do you dispute that finding specifically? If so, on what basis?

RESPONSE: Yes, the conclusion in the OIG report was not supported by the complete record. The OIG excluded exculpatory information from the report. As the Judge stated in the Court 's Memorandum Opinion and Order, Case 1:18-cv-01452-RDM Document 74 *SEALED* Filed

03/31/22, p6 "although Wiercinski did receive several phone calls during that period from 'unavailable' numbers," that information was not included in the OIG report.

18) Whatever the outcome of your Privacy Act litigation regarding the report's completeness, that litigation does not appear to have disturbed the OIG's underlying finding that you advocated for your wife's employment in a position on a team you would lead, without first seeking ethics guidance despite having received training that specifically flagged that scenario. Do you agree that occurred? What steps have you taken since 2016 to ensure you proactively identify and disclose conflicts of interest, rather than relying on others to raise them?

RESPONSE: No, I do not agree. My wife was never to be in my chain of command. Further, the question refers to a team was not considered until after an offer was made to my wife.

19) As a nominee for a position requiring the public's confidence in your candor and impartiality, how do you respond to concerns that this history — an OIG finding of false statements to investigators, followed by years of related litigation — raises questions about your suitability for a role requiring transparency and independence from any institutional or personal interest in a matter?

RESPONSE: The OIG report was not accepted by VA and the facts are presented in the Court 's Memorandum Opinion and Order, Case 1:18-cv-01452-RDM Document 74 *SEALED* Filed 03/31/22.

20) Please provide to the Committee all relevant materials including files, notes, letters and other documents in your possession relevant to the 2018 OIG investigation into claims of conflict of interest, nepotism and false statements during your employment at VA and all relevant materials connected to your subsequent lawsuits related to that investigation.

RESPONSE: I direct you to the Court 's Memorandum Opinion and Order, Case 1:18-cv-01452-RDM Document 74 *SEALED* Filed 03/31/22, which presents the information under seal of the Court. This was replaced by the Court on 04/19/22 to remove filed under seal. Many documents were filed by defendant and plaintiff were filed under seal or, if on the record, the documents were substantially redacted in accordance with the Court Order. A handful of the District Court's related memorandum orders are published in the Federal Reporter or on Westlaw: *Fleck v. OIG*, No. 1:18-cv-01452-RDM, 2020 WL 42842 (D.D.C. Jan. 3, 2020); *Fleck v. OIG*, 596 F. Supp. 3d 24 (D.D.C. Mar. 31, 2022); *Fleck v. OIG*, 651 F. Supp. 3d 46 (D.D.C. Jan. 10, 2023). These publicly available orders contain the best records regarding the matter without violating the seal.

21) Do you believe the President, VA Secretary, or any other Administration officials should have influence over CAVC? Why or why not?

RESPONSE: I do not believe that the President, VA Secretary, or any other Administration officials should have influence over the CAVC. The integrity of the judicial process depends on the independence of the court from executive or administrative interference. Maintaining this separation ensures that veterans' claims are adjudicated fairly and impartially, based solely on the law and the facts presented, rather than any external political or administrative interests.

Questions for the Record
Nomination Hearing of Robert Fleck for
Judge for the U.S. Court of Appeals for Veterans Claims
From Ranking Member Richard Blumenthal

1. **What is your current political party affiliation?**

   RESPONSE: I am not affiliated with any party.

2. **Did anyone advise you to change your party affiliation prior to your nomination or during the nomination process?**

   RESPONSE: No.

3. **Were you required to sign a Non-Disclosure Agreement during the nomination process?**

   RESPONSE: No.

4. When asked at your nomination hearing if you ever discussed the employment of your wife at VA's Office of General Counsel, you said, "My supervisor at the time, the Deputy General Counsel, asked me about my wife and I said I have no comment on it and then he asked me to send him her resume and that is the only contact I did."

   When asked if you recused yourself from her hiring process you said, "Yes I did, on the first mention of her name, yes."

   However, as part of OIG's investigation, multiple employees stated that you were on a call in June 2016 where you discussed her employment. You also said you discussed her experience and employment in conference calls and hallway discussions, sent her resume to your supervisor, and there is evidence you were involved in discussions and email chains regarding the position description.

   Please explain the discrepancy between your hearing testimony and the evidence stated in both the OIG's investigation report and the District Court's opinion.

   RESPONSE: Respectfully, I am not aware of any discrepancy between my hearing testimony and the evidence stated in those sources. I have been gratified that, after bringing this litigation to clear my reputation, I have continued to serve at the VA, including receiving several promotions.

   The question as presented omits relevant information. The opinion notes that when other employees asked me about her as a candidate, I did not recommend her and only answered basic factual questions. *Fleck v. OIG*, 596 F. Supp. 3d 24, 31 (2022). As I argued before that court, the OIG omitted key testimony that contradicted the allegations raised in your question.

   My hearing testimony is consistent with my actions in my supervisory capacity and the facts as set forth by the Trial Court Judge's opinion, which I referenced in my testimony:

   > **Buonocore attested that on the June 2016 call, he first raised Wiercinski's name as a possible candidate for the e-Discovery position because he had "supervised [her] when [they] were both attorneys for the army, and she had done an exceptional job handling e-discovery for some of the army's most complex cases." *Id.* (Buonocore**

Decl. ¶ 3). Buonocore further stated that he did "not remember Robert Fleck—on that phone call or at any other time—to have recommended Ms. Wiercinski for the e-discovery position at the VA or to have promoted her candidacy in any other way." *Id.* (Buonocore Decl. ¶ 4). Because OIG did not interview Buonocore, this account was not included in its final report.

Fleck also attached a sworn statement from Benjamin Diliberto, who was on the Best Qualified Panel that recommended Wiercinski's hiring and had been interviewed by OIG back in June 2017 as part of their investigation. Dkt. 58-1 at 41 (Def. Resp. to Pl. SUMF ¶ 112); Dkt. 53-4 at 136–37 (Diliberto Stmt.). In his statement, Diliberto took issue with two findings in the OIG report, which he said conflicted with his experience: first, that Fleck "helped establish for Ms. Wiercinski an e-Discovery attorney position" and, second, that Fleck "advocated for her employment." Dkt. 53-4 at 136 (Diliberto Stmt.). With respect to the first finding, Diliberto explained that "OIG's implication that [Fleck] w[as] responsible for the creation of the position is utterly ridiculous" because "discussions about hiring a dedicated e-Discovery attorney" took place "[m]ore than a year before [Fleck] w[as] even hired at VA." *Id.* And with respect to OIG's second finding, Diliberto asserted that "[t]he implication that [Fleck] somehow influenced the determination of the Best Qualified Panel is absurd" because "[Diliberto] and [Fleck] never spoke about Ms. Wiercinski before she was hired;" Diliberto "had no idea who she was when [he] reviewed her resume;" and Wiercinski "was, by a wide margin, the most qualified applicant." *Id.* Although OIG had interviewed Diliberto, it did not include any of his testimony in its report, and it did not include Diliberto's interview transcript with the materials it sent along with the report to VA management. Dkt. 58-1 at 42 (Def. Resp. to Pl. SMF ¶¶ 114–15).

***Id.* at 35-36. To the extent there is any question regarding the totality of my actions related to my wife's employment, they are described in the trial court's opinion. That opinion was also referenced in multiple answers to your questions prior to the hearing.**

5. When asked at your nomination hearing if you shared confidential VA data with your wife you said, "Yes sir, I did. She was an Army attorney, and I don't think that's highlighted in the report, with a decade of experience as an Army attorney."

   Please clarify how your wife's experience as an Army attorney is relevant to your disclosure of confidential information to her.

   RESPONSE: I shared information to a government Army civilian attorney with a security clearance to help her preparation to start employment with the VA after I believed her to have received an informal job offer. I believed that her clearance status and informal job offer justified providing information to help her hit the ground running, given the demands of the office at the team. I acknowledge that by doing so, I was found to have inadvertently engaged in a technical violation. As the opinion notes, the VA General Counsel "decided not to demote [me]and instead imposed written counseling as discipline for (what he characterized as) [my] 'technical violation' of sharing sensitive information." 596 F. Supp. 3d at 36.

6. When asked at your nomination hearing if the OIG ever reversed any of its findings that you violated laws, you said:

"No sir, but the trial court judge has made some statements, and I would like to quote one statement for you. 'The report you referred to was substantially discredited because the IG failed to perform its proper duties to investigate and consider materially significant exculpatory evidence brought to the IGs attention during the investigation. The trial court judge stated sufficient evidence of the IG's intent or willfulness was adduced to substantiate the allegation. IG pursued its investigation only with an eye towards substantiating the allegations rather than providing a complete account.' And that's at page 41 of the court's opinion," referencing a March 31, 2022, court opinion.

Please provide documentation of this quote from the trial court judge.

RESPONSE: The court opinion that I referenced is attached as an exhibit. To clarify, the Court has unsealed the opinion, but not the related exhibits. At the hearing, I explained that the report was discredited because the IG failed to perform its proper duties to investigate and consider materially significant exculpatory evidence brought to the IG's attention during the investigation. At the hearing, I quote from the opinion that the IG "pursued its investigation only with an eye toward substantiating the allegations … rather than providing a complete account." That excerpt comes from this longer section of the opinion:

> **At this stage, Fleck has adduced sufficient evidence of intent or willfulness to survive a motion for summary judgment. Fleck's theory is that Defendant pursued its investigation only with an eye toward substantiating the allegations against him rather than providing a complete account of his culpability. *See* Dkt. 53 at 28. This theory finds some support in Defendant's failure to interview Buonocore, even after Fleck informed OIG that Buonocore would have exculpatory information concerning Fleck's role in the hiring of his wife, and in OIG's failure to offer a satisfactory explanation for why it did not do so. Defendant attempts to defend this omission by explaining that Buonocore had retired by the time of the investigation (which meant that OIG could not compel his testimony), *see* Dkt. 58-1 at 43 (Def. Resp. to Pl. SMF ¶ 116), but Defendant offers no contemporaneous evidence to explain why OIG investigators did not ask him to testify voluntarily.**
>
> **Similarly, Defendant does not satisfactorily explain why it excluded Diliberto's testimony from the report, even though Diliberto's testimony suggests that Fleck's role in the creation of the e-discovery position and the hiring process was less significant than the report made it out to be. Defendant defends its actions by explaining that the report was only focused on the narrow question of "advocacy" and the testimony of Diliberto and others was irrelevant to that specific question. Dkt. 49 at 33. What that argument misses, however, is that Section 552a(e)(6) required Defendant to ensure not only that the information in the report was relevant but also that it was *complete*. To appreciate the importance of completeness in operation, one need look no further than VA Deputy Secretary Bowman's decision to retract his concurrence, after reviewing Buonocore's and Diliberto's excluded testimony.**
>
> **Finally, Fleck has also adduced direct evidence that arguably casts doubt on the objectivity of OIG's approach. Specifically, he points to an email sent by an OIG employee, who, upon realizing that the report at one point erroneously used the word "indict" instead of "indicate," joked that the error was a "Freudian" slip,**

> **thereby suggesting that OIG had pursued its investigation with an indictment as a goal. Dkt. 58-1 at 29 (Def. Resp. to Pl. SMF ¶ 81).**
>
> **Put together, the Court concludes that this evidence creates a genuine issue of material fact as to whether Defendant acted "with something greater than gross negligence" with respect to its obligation to assure the completeness of its report, and, thus, the Court declines to grant Defendant's motion for summary judgment on that ground.**

***Fleck*, 596 F. Supp. 3d at 53.**

being injured by CARRP. The Court therefore lacks subject matter jurisdiction.

IV. Conclusion

For these reasons, the Court will grant the government's motion to dismiss and deny Giliana's motion for summary judgment. A separate Order accompanies this Memorandum Opinion.



Robert M. FLECK, Plaintiff,

v.

DEPARTMENT OF VETERANS AFFAIRS OFFICE OF the INSPECTOR GENERAL, Defendant.

Civil Action No. 18-1452 (RDM)

United States District Court,
District of Columbia.

Signed 03/31/2022

Background: Employee of Department of Veterans Affairs (VA), Office of General Counsel (OGC), brought action against VA Office of the Inspector General (OIG) under Privacy Act based on OIG's dissemination and publication of investigation report regarding employee's alleged involvement in his wife's selection for position at OGC, which employee contended contained inaccurate or incomplete information about him. The United States District Court for the District of Columbia, Randolph D. Moss, J., 2020 WL 42842, denied OIG's motion to dismiss. OIG moved for summary judgment. Employee moved to strike purported expert declaration and for sanctions based on nondisclosure of purported expert.

Holdings: The District Court, Randolph D. Moss, J., held that:

(1) declaration regarding nature and centrality of OIG's investigative function was permissible fact testimony;

(2) Privacy Act authorized VA to exempt records system kept by OIG's Office of Investigations;

(3) exemption from Privacy Act's accuracy requirement for records disclosed under FOIA only applied to records actually disclosed in response to FOIA request;

(4) Privacy Act did not require OIG to update report following dissemination;

(5) OIG made reasonable efforts to ensure accuracy of report's conclusion that employee and wife made false statements;

(6) employee's rejections from job positions and promotion were not caused by any inaccuracies or omissions in report; and

(7) triable issues existed as to whether any inaccuracies or omissions in report caused employee to incur legal fees to defend against proposed demotion.

Motion for summary judgment granted in part and denied in part; motion to strike and for sanctions denied.

1. Federal Civil Procedure ⇨2544

The nonmoving party's opposition to summary judgment must consist of more than unsupported allegations or denials, and must be supported by affidavits, declarations, or other competent evidence setting forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(c).

2. Federal Civil Procedure ⇨2546

Once the moving party carries its initial burden on summary judgment, the nonmoving party must provide evidence that would permit a reasonable jury to find

in its favor; if the nonmoving party's evidence is merely colorable or not significantly probative, the court should grant summary judgment. Fed. R. Civ. P. 56(c).

3. Records ⇐574

Actual damages under the Privacy Act are limited to pecuniary harms only and do not extend to recoveries for loss of reputation, shame, mortification, injury to the feelings, and the like. 5 U.S.C.A. § 552a(g)(1)(C) and (D).

4. Federal Civil Procedure ⇐1278, 2537

Declaration of Department of Veterans Affairs (VA), Office of Inspector General's (OIG) Assistant Inspector General for Investigations regarding nature and centrality of OIG's investigative function was fact testimony, and, thus, OIG's failure to disclose Assistant Inspector General as expert did not preclude declaration's admissibility in VA employee's action against OIG for violations of Privacy Act, where declaration contained information about OIG's historical organization, functions, and systems of records that declarant obtained observationally in the course of his duties as head of directorate and his review of investigative records and report at issue in employee's claims, not results of process of reasoning that could only be mastered by experts in field. 5 U.S.C.A. § 552a; Fed. R. Civ. P. 26(a)(2); Fed. R. Evid. 701.

5. Federal Civil Procedure ⇐2537

Inference stated by Department of Veterans Affairs (VA), Office of Inspector General's (OIG) Assistant Inspector General for Investigations, in declaration supporting OIG's motion for summary judgment on VA employee's claims under Privacy Act, that principal function of OIG's Office of Investigations was investigative activity pertaining to enforcement of criminal laws was empirical statement, not improper legal conclusion that would render statement inadmissible; declarant permissibly testified as to inference he drew based on his particularized knowledge of structure and activities of office he directed. 5 U.S.C.A. § 552a(j)(2).

6. Records ⇐548

The extent to which an activity is the principal function of an agency or component thereof, for purposes of determining the applicability of the Privacy Act's exclusion for designated records of an agency that performs as its principal function any activity pertaining to the enforcement of criminal laws, is an empirical question about which a witness may testify, not a legal conclusion. 5 U.S.C.A. § 552a(j)(2).

7. Records ⇐335

Office of Investigations within Department of Veterans Affairs (VA), Office of Inspector General (OIG), was "agency component" within meaning of Privacy Act exemption for records of agencies or components thereof which performed activity related to criminal law enforcement as their principal function, as necessary for Privacy Act to authorize VA Secretary to exempt report issued by Office of Investigations regarding VA employee's alleged nepotism; Office of Investigations, not OIG, was entity that maintained system of records at issue, as reflected by VA rule exempting such records from Privacy Act and indicating records were located in Office of Investigations and maintained by its director, and statute did not limit "components" to larger units of agencies such as OIG. 5 U.S.C.A. § 552a(j)(2); 38 C.F.R. § 1.582(b)(1).

See publication Words and Phrases for other judicial constructions and definitions.

8. Records ⇐318(1)

Principal function of Office of Investigations, which was part of Department of Veterans Affairs (VA), Office of Inspector

General (OIG), was activity pertaining to enforcement of criminal laws, as necessary for Privacy Act to authorize VA to exempt records system kept by Office of Investigations from certain provisions of Act, including provision under which VA employee brought action against OIG based on its dissemination of report about nepotism investigation; Office of Investigations investigated potential crimes and other violations of law involving VA programs an operations, 170 out of 200 investigators in such Office were criminal investigators, and report at issue was part of system of records compiled for purpose of investigating possible federal crimes. 5 U.S.C.A. §§ 552a(e)(5), 552a(j)(2); 38 C.F.R. § 1.582(b)(1).

9. Records ⇐318(1)

Privacy Act provision authorizing agencies to exempt systems of records maintained by agencies or components thereof with primary purpose relating to criminal law enforcement did not authorize Department of Veterans' Affairs (VA) to exempt itself as a whole from all civil liability provisions under Act, and, thus, VA regulatory provision purporting to exempt agency from causes of action under Act was unenforceable to such extent; subsection of Privacy Act creating civil liability for violations of Act was grant of jurisdiction and waiver of immunity directed towards courts and aggrieved individuals rather than substantive provision directed towards agencies, and agencies could only exempt systems of records, not themselves, from Act. 5 U.S.C.A. §§ 552a(g), 552a(j)(2); 38 C.F.R. § 1.582.

10. Records ⇐318(1)

Although agencies may exempt systems of records from the Privacy Act, they may not exempt themselves; thus, an agency has no power under the Act to exempt itself from the civil liability provisions of the Act. 5 U.S.C.A. § 552a.

11. Records ⇐333

Because the slight variation in wording between the Privacy Act provision requiring an agency to "maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination" and the provision creating a civil action against an agency for failure to maintain "any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination" made on the basis of such a record is of no substantive significance, a plaintiff has no cause of action under the latter provision if his suit is based on a record that is exempt under the former. 5 U.S.C.A. §§ 552a(e)(5), 552a(g)(1)(C).

12. Records ⇐335

Privacy Act provision exempting agency from reasonably ensuring records were accurate, complete, timely, and relevant prior to dissemination if "dissemination is made pursuant to" Privacy Act provision applying where disclosure of record "would be" required under Freedom of Information Act (FOIA) did not apply to Department of Veterans Affairs (VA), Office of Inspector General (OIG) investigation report that was not disclosed in response to any FOIA request, even though OIG reports were statutorily required to be disclosed publicly; surrounding provisions applying where actual disclosures "would be" required indicated phrase "would be" in FOIA-related provision of Act could not refer to hypothetical FOIA disclosures of information required to be or traditionally released to public. 5 U.S.C.A. §§ 552, 552a(b), 552a(e)(6); 38 U.S.C. § 312(c)(1)(C).

See publication Words and Phrases for other judicial constructions and definitions.

13. Administrative Law and Procedure ⇦2210

Courts must exhaust all the traditional rules of statutory interpretation before invoking *Chevron* deference to an agency's interpretation of a statute.

14. Statutes ⇦1158

As a basic rule of statutory interpretation, the same statutory phrase cannot simultaneously hold two incompatible meanings.

15. Records ⇦335

Privacy Act provision requiring agency, prior to disseminating records about an individual, to "make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes" did not oblige Department of Veterans Affairs (VA), Office of Inspector General (OIG), to update report it disseminated regarding VA employee's nepotism investigation after VA Deputy Secretary retracted his concurrence letter and disagreed with certain conclusions of report, even though absence of retraction was misleading in that it suggested VA management still fully concurred with report's findings, where concurrence was rescinded after report was published. 5 U.S.C.A. § 552a(e)(6).

16. Records ⇦335

Department of Veterans Affairs (VA), Office of Inspector General (OIG) complied with Privacy act's requirement of making reasonable efforts to ensure accuracy of nepotism investigation report's conclusion that VA employee and his wife made false statements regarding timing of VA's offer of employment to wife, where report documented that investigators interviewed hiring manager who stated, contrary to employee's and wife's representations, he would not have called employee's wife to offer employment until after hiring panel made recommendation, and that investigators did not find any such call in phone records, and employee failed to identify source of calls to wife from "unavailable" numbers or explain what else OIG should have done to identify numbers or link them to hiring manager. 5 U.S.C.A. § 552a(e)(6).

17. Records ⇦334

Generally speaking, the Privacy Act, in requiring an agency to make reasonable efforts to ensure, prior to dissemination of records about an individual, that such records are accurate, complete, timely, and relevant for agency purposes, allows for correction of facts but not correction of opinions or judgments; thus, in order to be actionable, a subjective judgment must be based on a demonstrably false factual premise. 5 U.S.C.A. § 552a(e)(6).

18. Federal Civil Procedure ⇦2509.8

Genuine issue of material fact as to whether, in light of professional and internal agency standards governing investigations, Department of Veterans Affairs (VA), Office of Inspector General (OIG) report concerning nepotism investigation into hiring of VA employee's wife reasonably omitted certain information or made statements that employee contended were inaccurate precluded summary judgment on employee's claims against OIG for violation of Privacy Act's requirement that agency, prior to dissemination of records concerning an individual, make reasonable efforts to assure such records were accurate, complete, timely, and relevant for agency purposes. 5 U.S.C.A. § 552a(e)(6).

19. Records ⇦335

In a case involving the dissemination of a report concerning an internal investigation, such as one conducted by the Department of Veterans Affairs (VA), Office of Inspector General (OIG), the standard for a violation of the Privacy Act provision

requiring an agency, prior to disseminating records about an individual, to make reasonable efforts to assure such records are accurate, complete, timely, and relevant for agency purposes is not whether omitted information was material or would have altered the report's conclusions; even if additional information would not alter a report's bottom line, it might nevertheless provide important context that bears on the subject's level of culpability and cast the report's conclusions in a different light. 5 U.S.C.A. § 552a(e)(6).

20. Records ⇐574

The intentional-or-willful standard for awarding damages under the Privacy Act does not require an agency to set out purposely to violate the Act. 5 U.S.C.A. § 552a(g)(4).

21. Records ⇐574

A plaintiff seeking damages for a violation of the Privacy Act must prove that the agency's actions were (1) so patently egregious and unlawful that anyone undertaking the conduct should have known it unlawful; (2) somewhat greater than gross negligence; (3) committed without grounds for believing them to be lawful; or (4) in flagrant disregard of others' rights under the Act. 5 U.S.C.A. § 552a(g)(4).

22. Federal Civil Procedure ⇐2509.8

Genuine issue of material fact as to whether Department of Veterans Affairs (VA), Office of Inspector General (OIG) acted intentionally or willfully when allegedly failing to assure completeness of its report on nepotism investigation regarding hiring of VA employee's wife prior to disseminating such report precluded summary judgment on employee's claims for damages based on alleged violations of Privacy Act requirement that agency, prior to dissemination of report about an individual, make reasonable efforts to ensure report's accuracy, completeness, timeliness, and relevance for agency purposes. 5 U.S.C.A. §§ 552a(e)(6), 552a(g)(4).

23. Records ⇐574

To make out a damages claim under the Privacy Act, the alleged adverse effects of an applicable violation of the Act must result from the inaccuracy of the agency's record, not the mere existence of the record. 5 U.S.C.A. §§ 552a(g)(1)(D), 552a(g)(4).

24. Federal Civil Procedure ⇐2509.8

Although causation is ordinarily a question of fact for the jury, summary judgment on a claim for damages under the Privacy Act is appropriate when the plaintiff fails to proffer any evidence from which a reasonable jury could find the required causal link between the agency's Privacy Act violation and actual damages the plaintiff has suffered. 5 U.S.C.A. §§ 552a(g)(1)(D), 552a(g)(4).

25. Records ⇐335

Department of Veterans Affairs (VA) employee's rejections from multiple private-sector job positions were not caused by alleged omissions or inaccuracies in VA Office of Inspector General (OIG) report regarding nepotism investigation that arose from hiring of employee's wife, and, thus, any failure by OIG to make reasonable efforts to ensure report's accuracy and completeness prior to public dissemination did not entitle employee to damages under Privacy Act based on private-sector job rejections, absent evidence that anyone at private-sector companies was aware of report or that employee would have been selected for any position if report had been accurate. 5 U.S.C.A. §§ 552a(e)(6), 552a(g)(1)(D), 552a(g)(4).

26. Records ⇐335

Department of Veterans Affairs (VA) employee's rejection from job position with Department of Defense (DOD) was not

caused by alleged omissions or inaccuracies in VA Office of Inspector General (OIG) report regarding nepotism investigation that arose from hiring of employee's wife, and, thus, any failure by OIG to make reasonable efforts to ensure report's accuracy and completeness prior to public dissemination did not entitle employee to damages under Privacy Act based on non-selection for DOD position, where hiring officials within DOD agreed they selected best qualified candidate for position, did not consider VA employee's qualifications to be comparable, and did not discuss OIG investigation or report when discussing VA employee's candidacy. 5 U.S.C.A. §§ 552a(e)(6), 552a(g)(1)(D), 552a(g)(4).

27. Records ⇦335

Denial by Department of Veterans Affairs (VA) of promotion to VA employee was not caused by alleged omissions or inaccuracies in VA Office of Inspector General (OIG) report regarding nepotism investigation that arose from hiring of employee's wife, and, thus, any failure by OIG to make reasonable efforts to ensure report's accuracy and completeness prior to disclosure of initial draft of OIG report did not entitle employee to damages under Privacy Act based on non-promotion, absent non-speculative evidence that OIG disclosed any findings or results of draft report, as opposed to mere existence of investigation, to any decisionmakers by time non-selection decision was made. 5 U.S.C.A. §§ 552a(e)(6), 552a(g)(1)(D), 552a(g)(4).

28. Records ⇦335

Any omissions or inaccuracies in Department of Veterans Affairs (VA), Office of Inspector General (OIG) report regarding nepotism investigation that arose from hiring of VA employee's wife did not cause employee to incur legal fees in defending against whistleblower allegations that employee improperly hired three former colleagues into VA positions, and, thus, any failure by OIG to make reasonable efforts to ensure report's accuracy and completeness prior to its dissemination did not entitle employee to damages under Privacy Act based on such legal fees, absent evidence that whistleblower cited or otherwise used OIG report in connection with her allegations. 5 U.S.C.A. §§ 552a(e)(6), 552a(g)(1)(D), 552a(g)(4).

29. Records ⇦335

Any omissions or inaccuracies in Department of Veterans Affairs (VA), Office of Inspector General (OIG) report regarding nepotism investigation that arose from hiring of VA employee's wife did not cause employee's medical condition to worsen, and, thus, any failure by OIG to make reasonable efforts to ensure report's accuracy and completeness prior to its dissemination did not entitle employee to damages under Privacy Act based on adverse health effects, absent expert medical opinions as to causation of health effects and absent medical records establishing employee's medical condition prior to dissemination of report. 5 U.S.C.A. §§ 552a(e)(6), 552a(g)(1)(D), 552a(g)(4).

30. Federal Civil Procedure ⇦2509.8

Genuine issues of material fact as to whether any inaccuracies or omissions in Department of Veterans Affairs (VA), Office of Inspector General (OIG) report concerning investigation into VA employee's involvement in his wife's hiring proximately caused employee to incur legal fees to defend against his proposed demotion precluded summary judgment on employee's claim for damages under Privacy Act based on OIG's alleged failure to make reasonable efforts to ensure accuracy and completeness of records concerning an individual prior to disseminating such records. 5 U.S.C.A. §§ 552a(e)(6), 552a(g)(1)(D), 552a(g)(4).

31. Records ⇐574

Legal fees that a plaintiff incurs to protect against the effects of an agency's Privacy Act violations are cognizable damages under the Privacy Act. 5 U.S.C.A. § 552a(g)(4).

32. Records ⇐591

Attorney fees and efforts that Department of Veterans Affairs (VA) employee allegedly expended to respond to proposed demotion, which arose from nepotism investigation report concerning hiring of employee's wife, constituted injury supporting employee's Article III standing to bring action to recover such expenses, and, thus, expenses and efforts constituted "adverse effects" within meaning of Privacy Act provision creating civil action for Privacy Act violations that had such effects. U.S. Const. art. 3, § 2, cl. 1; 5 U.S.C.A. §§ 552a(g)(1)(D), 552a(g)(4).

33. Torts ⇐119

Although independent action by a third party can sometimes negate the proximate causality of a defendant's actions, that is true only when the third party's action is unforeseeable to the defendant.

Sara E. Kropf, Kropf Moseley PLLC, Washington, DC, for Plaintiff.

Jeremy S. Simon, DOJ-USAO, Washington, DC, for Defendant.

MEMORANDUM OPINION AND ORDER

RANDOLPH D. MOSS, United States District Judge

This Privacy Act case concerns the dissemination and publication of a report based on an investigation that Defendant, the Office of the Inspector General of the Department of Veterans Affairs ("VA OIG" or "OIG"), conducted into Plaintiff Robert Fleck's alleged involvement in his wife's selection for a position at the VA's Office of General Counsel, where Fleck also worked. Fleck alleges that Defendant violated two provisions of the Privacy Act—5 U.S.C. § 552a(e)(5) and (e)(6)—by maintaining and publishing inaccurate or incomplete information about him, which, in turn, prevented him from obtaining a higher paying job, caused him to incur legal fees to defend against the VA OIG's findings, and resulted in adverse effects on his health. After the Court denied Defendant's motion to dismiss on January 3, 2020, Dkt. 21, Fleck filed a second amended complaint, Dkt. 31, and the parties engaged in discovery, which concluded on March 1, 2021. Defendant now moves for summary judgment with respect to Fleck's claims, Dkt. 49.[1] For the reasons set forth below, the Court will **GRANT** in part and **DENY** in part Defendant's motion.

I. BACKGROUND

A. Factual Background

The following facts are taken from the parties' statements of material fact and responses thereto. *See* Dkt. 49-1 (Def. SUMF); Dkt. 53-1 at 1–6 (Pl. Resp. to Def.

1. The VA OIG styles its motion as a "Motion to Dismiss Amended Complaint and, Alternatively, for Summary Judgment," Dkt. 49 at 1, but it does not clearly delineate which of its arguments support dismissal versus summary judgment. In light of this ambiguity and because the resolution of Defendant's motion requires the Court to reach beyond the allegations in the complaint by examining the record created during discovery, the Court will resolve Defendant's motion according to the summary-judgment standard of Rule 56. *See* Fed. R. Civ. P. 12(d).

SUMF); Dkt. 53-1 at 6–36 (Pl. SMF); Dkt. 56-1 at 6–36 (Pl. Sealed SMF); Dkt. 58-1 (Def. Resp. to Pl. SMF). The Court will summarize the relevant portions of the record and, where relevant, note the parties' disagreements. *See Seo v. Oh*, No. 18-785, 2021 WL 4318100, at *3 (D.D.C. Sept. 23, 2021). Consistent with Federal Rule of Civil Procedure 56, the Court will view the evidence in the light most favorable to Fleck, who is the nonmoving party, and will draw all reasonable inferences in his favor. *See* Fed. R. Civ. P. 56; *Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011).

In May 2016, Plaintiff Robert Fleck left a twelve-year career working as a lawyer for the Army to join the VA's Office of General Counsel ("VA OGC" or "OGC") as Chief Counsel of the Procurement Law Group, a Senior Executive Service ("SES") position. Dkt. 53-1 at 9 (Pl. SMF ¶ 18). The Procurement Law Group is one of three components of the OGC's Contract Law Operations division, which also includes the Real Property Law Group and the District Contracting National Practice Group. *Id.* In his capacity as Chief Counsel of the Procurement Law Group, Fleck also served as a senior manager of the Contract Litigation Team. Dkt. 58-1 at 8 (Def. Resp. to Pl. SMF ¶ 21).

Around the time Fleck joined OGC, the office had been experiencing significant e-discovery problems, Dkt. 53-1 at 9 (Pl. SMF ¶ 19), and, in April 2016, it had received approval to hire an attorney for a new e-discovery position, Dkt. 56-1 at 10 (Pl. Sealed SMF ¶ 21); Dkt. 58-1 at 8 (Def. Resp. to Pl. SMF ¶ 21). A decision was eventually made to locate that e-discovery position within the Real Property Law Group. Dkt. 56-1 at 10 (Pl. Sealed SMF ¶ 21).

In June 2016, the senior leadership of the OGC participated in a group call during which the e-discovery position was discussed. Dkt. 53-1 at 11 (Pl. SMF ¶ 28). This call included three SES-level employees—Fleck, Deputy General Counsel Richard Hipolit, and General Counsel Michael Hughes—and six other employees who, at the time, were GS-15 level or below: Cameron Gore, Charlma Quarles, Lisa House, Don Mobly, Barbara Stutuzer, and Vincent Buonocore. *Id.* at 11 (Pl. SMF ¶ 30); Dkt. 58-1 at 11–12 (Def. Resp. to Pl. SMF ¶ 27). The parties agree that on this call Fleck's wife, Kristina Wiercinski, who at the time worked as a lawyer for the Army, was discussed as a possible candidate for the e-discovery position. *See* Dkt. 58-1 at 12 (Def. Resp. to Pl. SMF ¶ 31). There is conflicting evidence in the record, however, regarding the extent to which Fleck contributed to that conversation. One of the participants on the call, Vincent Buonocore, recalls that he first raised Wiercinski's name on the call because he had previously worked with her in the Army and knew that she had e-discovery experience. Dkt. 53-1 at 13–14 (Pl. SMF ¶ 42); Dkt. 53-4 at 20 (Buonocore Decl. ¶ 3). Buonocore does not remember Fleck "recommend[ing] Ms. Wiercinski for the e-discovery position" or "promot[ing] her candidacy in any other way." Dkt. 53-4 at 20 (Buonocore Decl. ¶ 4). Two other participants remember things differently. Michael Hughes recalls Fleck "mention[ing] that his wife [had] experience in that particular area" and "describ[ing] what her background and experience was." Dkt. 53-1 at 12 (Pl. SMF ¶ 33). Richard Hipolit's memory is less clear. "[T]he gist" of what he recalls "is [Fleck] saying that [his wife] would be . . . a qualified candidate," but he also cautions that he does not "remember exactly what [Fleck] said" and does not "remember [Fleck] saying that she would be a good candidate." *Id.* (Pl. SMF ¶ 34). Instead, Hipolit says he was left with "the impression she would be a candidate." *Id.*

For his part, Fleck told OIG investigators that when Buonocore suggested his wife would be a good candidate, he said "if that's the case, I'm not involved in it. I don't want to be part of it. I'm not in it." Dkt. 53-3 at 151 (Fleck Tr. at 65). Later, however, Fleck explained that "in hallway discussion[s] or [on] conference call[s]," "Cam Gore and Reid Nicolosi kept on asking" him about his wife's candidacy for the position. *Id.* at 151–52 (Fleck Tr. at 65–66); *see* Dkt. 53-1 at 13–14 (Pl. SMF ¶ 36). Fleck recalls that he "absolutely [did] not" recommend her for the position—calling that a "line" he would not cross—but did confirm that he told Gore and Nicolosi that "she did e-discovery" for "five years" and, "when asked, [he] would answer that she had the experience and could do the job." Dkt. 53-3 at 152 (Fleck Tr. at 66–68); *see* Dkt. 53-1 at 13–14 (Pl. SMF ¶ 36).

On June 10, 2016, Hipolit sent Fleck an email that said: "Bob, this is a draft policy on salaries for new attorneys that I mentioned. It is going to be circulated to the Chief Counsels for comment before it is finalized, but we could make a good case for our e-Discovery expert under these factors, we should be in good shape. If you can get me a resume, we can think this through and move forward." Dkt. 58-5 at 2 (Hipolit Tr. 29); Dkt. 58-1 at 17 (Def. Resp. to Pl. SMF ¶ 43). In response, Fleck forwarded Wiercinski's résumé, along with the message "Resume as we discussed." Dkt. 53-1 at 14 (Pl. SMF ¶ 43).

In the ensuing months, OGC set about designing the e-discovery position and planning the vacancy announcement. The parties dispute the extent to which Fleck was involved in that process. The email record from that period shows that Fleck was sent or copied on five emails from OGC employees regarding the position description. Dkt. 49-3 at 15–16 (OIG report). On Fleck's telling, he had no involvement in either designing the position or creating the position description, and while he acknowledges that he was included on emails about the position description, he notes that he did not send any emails back drafting or editing the description. Dkt. 53-1 at 10 (Pl. SMF ¶¶ 22, 25–26). OIG, in contrast, maintains that Fleck's involvement was more substantial. It points to statements by Cameron Gore, the official responsible for filling the new e-discovery position, who told OIG investigators that Fleck participated in conversations about the position description because he had experience with e-discovery matters. Dkt. 58-1 at 9–10 (Def. Resp. to Pl. SMF ¶¶ 22, 25–26); Dkt. 49-3 at 15–16 (OIG report). Specifically, Gore said that "Fleck had as much input as he did on the [position description] and that they were working together and collaborating on the e-Discovery [position description] as well as other [positions descriptions]." Dkt. 49-3 at 15 (OIG report).

OGC posted the e-discovery position on August 12, 2016, with applications due on August 19, 2016. Dkt. 53-1 at 14 (Pl. SMF ¶ 45). The announcement required external candidates to send their applications to Gore, who, as head of the Real Property Law Group, would be the selecting official for the position. *Id.* (Pl. SMF ¶ 48); Dkt. 58-1 at 19 (Def. Resp. to Pl. SMF ¶ 48). On August 16, 2016, Fleck forwarded the position description to Wiercinski, Dkt. 53-1 at 14 (Pl. SMF ¶ 46), who submitted her application to Gore on August 18, 2016, *id.* at 15 (Pl. SMF ¶ 50).

Three candidates applied for the position in total. *Id.* (Pl. SMF ¶ 51). Gore then assembled a "Best Qualified Panel" of three OGC employees—Katherine Smyth, Benjamin Diliberto, and Reid Nicolosi—to formally review the applications. *Id.* (Pl. SMF ¶ 52). The parties vigorously dispute what happened next. According to Fleck,

sometime in "mid- to late-September," Gore telephoned Wiercinski and informally offered her the job, which she then accepted on the understanding that a formal offer would follow. *Id.* (Pl. SMF ¶ 53).

Defendant insists that no such call or informal offer ever occurred. On this score, it points to several pieces of evidence. First, Gore testified that he could not remember whether he made such a call, but added that he "did not have authority to let [Wiercinski] know . . . that she had the job" until the hiring "panel came back to [him]," which was in October. Dkt. 58-4 at 2–3 (Gore Tr. at 63–65, 67–68). Given the passage of time, however, he asked OIG to "check the phone records" to make sure. *Id.* at 3 (Gore Tr. at 66). OIG then asked Fleck and Wiercinski to provide any phone numbers that Gore might have called and then asked Gore for his VA office phone number, his VA cell phone number, and his personal cell phone number. Dkt. 49-3 at 19 (OIG report). OIG analyzed the telephone records associated with those numbers and found no evidence of a call taking place until after the hiring panel made its recommendation to Gore on October 4, 2016, although Wiercinski did receive several phone calls during that period from "unavailable" numbers. *Id.* at 19, 54; Dkt. 53-1 at 18 (Pl. SMF ¶ 65). According to OIG, the absence of any call from Gore was also consistent with the contemporaneous email record surrounding Wiercinski's hiring: Gore's emails show that, as late as October 3, 2016, he was still planning to hold interviews for the open position. Dkt. 49-3 at 29.

In any event, what is not disputed is that on September 30, 2016, Fleck sent Wiercinski an internal VA memo that catalogued various VA e-discovery "system failures" and contained privileged attorney work product. Dkt. 53-1 at 15 (Pl. SMF ¶ 55); Dkt. 58-1 at 21 (Def. Resp. to Pl. SMF ¶ 55); Dkt. 56 at 19. Fleck and Wiercinski both maintain, however, that Fleck sent this information to Wiercinski only *after* Gore had informally given her the job in mid to late September, so that Wiercinski could "get up to speed" quickly because the VA's e-discovery had "major problems" and "stuff [was] hitting the fan." Dkt. 53-3 at 153 (Fleck Tr. at 99–100). As discussed, Defendant disputes that any such call ever occurred.

On October 4, 2016, Gore received the Best Qualified Panel's evaluation of the three candidates. Dkt. 53-1 at 16 (Pl. SMF ¶ 57). The panel rated Wiercinski "exceptional" in each areas of evaluation and deemed her to be the best qualified among the candidates. *Id.* at 16 (Pl. SMF ¶ 59); Dkt. 58-1 at 22 (Def. Resp. to Pl. SMF ¶ 59). An hour after Gore received the panel's recommendation, Gore emailed Human Resources to say that he was selecting Wiercinski for the position and that he would "like to notify her of my decision today, and that HR will be relaying the official offer to her shortly." Dkt. 49-3 at 33. Gore called Wiercinski to offer her the position, which she accepted. *See* Dkt. 58-1 at 25–26 (Def. Resp. to Pl. SMF ¶ 65).

Several months later, in 2017, the VA OIG's Administrative Investigations Division received an allegation that Fleck "actively and openly solicited, during a conference call with other [SES] employees that the VA [OGC] hire his wife." Dkt. 49-1 at 1 (Def. SUMF ¶ 1); Dkt. 53-1 at 1 (Pl. Resp. to Def. SUMF ¶ 1). That allegation triggered an OIG investigation into Wiercinski's hiring, which culminated in a report issued on March 29, 2018. Dkt. 49-1 at 2 (Def. SUMF ¶ 2); *see also* Dkt. 49-3 at 7–26 (OIG Report). That report detailed the process surrounding Wiercinski's hiring and made several findings, including the following:

- "Mr. Fleck, by recommending his wife for the position of e-Discovery Coordinator, advocated for his wife's employment." Dkt. 49-3 at 20 (OIG report).
- "Mr. Fleck . . . referred [his wife] to Mr. Gore, who ultimately hired [her], and who, at the time, was a GS-15 Deputy Chief Counsel." *Id.* (OIG report).
- "There is a direct connection between Mr. Fleck referring his wife to Mr. Gore, and Mr. Gore being influenced by that referral." *Id.* (OIG report).
- "Mr. Fleck, as the Chief Counsel in charge of bringing the Contract Litigation Team together, participated personally and substantially in a particular matter in which he and his spouse had a financial interest" by (1) "[b]eing involved in the conversation regarding the team having an e-Discovery Coordinator," (2) "[a]dvocating for his wife's employment as the e-Discovery Coordinator," (3) "[p]articipating in a discussion regarding pay," (4) "[p]articipating in announcing the position," and (5) "[s]ending his wife VA sensitive data regarding e-Discovery matters that were not available to other candidates." *Id.* (OIG report).
- "Mr. Fleck shared VA sensitive data with Ms. [Wiercinski] before she was selected." *Id.* at 21 (OIG report).
- "The investigation determined that Mr. Fleck and Ms. [Wiercinski] made false statements about when Ms. [Wiercinski] was selected for the e-Discovery position to lessen the potential consequences of Mr. Fleck having shared VA sensitive data with a non-VA employee." *Id.* (OIG report).

Ultimately, the report concluded that "Mr. Fleck engaged in nepotism and acts affecting his personal financial interest when he used his position to advocate for the employment of his wife and participated in establishing for her a GS-14 e-Discovery attorney position on a team that he would ultimately lead." *Id.* at 19–20. OIG attached as an appendix to its report a letter from the Deputy Secretary of the VA, Thomas Bowman, dated February 9, 2018, in which Bowman stated that he had "reviewed and concur[s] with the findings and recommendation in the OIG report." Dkt. 49-3 at 23.

During its investigation, OIG twice referred findings to the Department of Justice for possible criminal prosecution pursuant to its obligation under the Inspector General Act to report a matter to the Department of Justice any time "reasonable grounds" arise to believe that there has been a violation of federal criminal law. *See* Inspector General Act of 1978, Pub. L. No. 95-452, § 4(d), 92 Stat. 1101, 1103 (codified as amended at 5 U.S.C. app.). On August 30, 2017, OIG presented allegations of nepotism and conflict of interest for a prosecution determination, Dkt. 56-1 at 46 (Def. Resp. to Pl. SMF ¶ 128), and on October 20, 2017, OIG submitted allegations of false statements to DOJ for a prosecution determination, *id.* at 47 (Def. Resp. to Pl. SMF ¶ 130). Both times, the Department of Justice declined to prosecute. *Id.* at 46, 47 (Def. Resp. to Pl. SMF ¶¶ 129, 131).

In October 2017, while OIG's investigation was wrapping up but before it issued its report, Fleck applied for the soon-to-be vacant position of Deputy General Counsel for Legal Operations. Dkt. 53-1 at 29 (Pl. SMF ¶ 132). On November 14, 2017, a Best Qualified Panel comprised of James Byrne (the General Counsel), Megan Flanz (the outgoing Deputy General Counsel for

Legal Operations), and Michael Hogan (the Deputy General Counsel for General Law) interviewed Fleck for the vacancy. *Id.* (Pl. SMF ¶ 133); Dkt. 49-6 at 1 (Flanz Decl. ¶¶ 2–3); Dkt. 49-7 at 1 (Hogan Decl. ¶¶ 2–3). One to two days later, on either November 15 or 16, Byrne notified Fleck that he had not been selected for the position. Dkt. 49-9 at 43 (Fleck Dep. at 98). On November 17, 2017, Byrne announced that Cathy Mitrano—who at the time served as Chief Counsel of the VA OGC's Southeast District South—had been selected. Dkt. 56-1 at 29 (Pl. SMF ¶ 134); Dkt. 58-1 at 48–49 (Def. Resp. to Pl. SMF ¶ 135); *see also* Dkt. 49-6 at 2–3 (Flanz Decl. ¶¶ 4–9); Dkt. 49-7 at 2–3 (Hogan Decl. ¶¶ 4–9).

OIG completed its initial internal draft of the report on November 17, 2017, Dkt. 58-1 at 48 (Def. Resp. to Pl. SMF ¶ 134); Dkt. 73-1 at 8 (case log), and circulated a final draft and a copy of the materials cited therein to VA management for review and comment on January 10, 2018, Dkt. 58-1 at 48 (Resp. to Pl. SMF ¶ 134); Dkt. 53-3 at 287; Dkt. 73-1 at 8 (case log). OIG also sent a copy of the draft report and cited materials to OGC management. Dkt. 58-1 at 39–40, 48 (Def. Resp. to Pl. SMF ¶¶ 108, 134). Subsequently, Cathy Mitrano, the proposing official, charged Fleck with "conduct [u]nbecoming" and "disclosure of sensitive information" in connection with the hiring of his wife and formally proposed that he receive a demotion from the SES level to the GS-15 level. *Id.* at 40 (Def. Resp. to Pl. SMF ¶ 108); Dkt. 73-5 at 2–6 (proposed demotion letter).

Fleck retained a lawyer to challenge the demotion. Dkt. 53-1 at 26 (Pl. SMF ¶ 110). With the assistance of counsel, he submitted a written response and attached two pieces of evidence. *Id.*; Dkt. 73-4 (response letter). The first was a declaration from Vincent Buonocore. Dkt. 53-4 at 20 (Buonocore Decl.). Buonocore attested that on the June 2016 call, he first raised Wiercinski's name as a possible candidate for the e-Discovery position because he had "supervised [her] when [they] were both attorneys for the army, and she had done an exceptional job handling e-discovery for some of the army's most complex cases." *Id.* (Buonocore Decl. ¶ 3). Buonocore further stated that he did "not remember Robert Fleck—on that phone call or at any other time—to have recommended Ms. Wiercinski for the e-discovery position at the VA or to have promoted her candidacy in any other way." *Id.* (Buonocore Decl. ¶ 4). Because OIG did not interview Buonocore, this account was not included in its final report.

Fleck also attached a sworn statement from Benjamin Diliberto, who was on the Best Qualified Panel that recommended Wiercinski's hiring and had been interviewed by OIG back in June 2017 as part of their investigation. Dkt. 58-1 at 41 (Def. Resp. to Pl. SUMF ¶ 112); Dkt. 53-4 at 136–37 (Diliberto Stmt.). In his statement, Diliberto took issue with two findings in the OIG report, which he said conflicted with his experience: first, that Fleck "helped establish for Ms. Wiercinski an e-Discovery attorney position" and, second, that Fleck "advocated for her employment." Dkt. 53-4 at 136 (Diliberto Stmt.). With respect to the first finding, Diliberto explained that "OIG's implication that [Fleck] w[as] responsible for the creation of the position is utterly ridiculous" because "discussions about hiring a dedicated e-Discovery attorney" took place "[m]ore than a year before [Fleck] w[as] even hired at VA." *Id.* And with respect to OIG's second finding, Diliberto asserted that "[t]he implication that [Fleck] somehow influenced the determination of the Best Qualified Panel is absurd" because "[Diliberto] and [Fleck] never spoke about Ms. Wiercinski before she was hired;" Dili-

berto "had no idea who she was when [he] reviewed her resume;" and Wiercinski "was, by a wide margin, the most qualified applicant." *Id.* Although OIG had interviewed Diliberto, it did not include any of his testimony in its report, and it did not include Diliberto's interview transcript with the materials it sent along with the report to VA management. Dkt. 58-1 at 42 (Def. Resp. to Pl. SMF ¶¶ 114–15).

Fleck submitted his response to VA General Counsel Byrne, who was responsible for deciding whether Fleck would receive discipline. *Id.* at 40–41 (Def. Resp. to Pl. SMF ¶¶ 110–11). After reviewing Fleck's response and Buonocore's and Diliberto's statements, Byrne asked OIG for a transcript of the Diliberto interview and questioned why they had not interviewed Buonocore. *Id.* at 42 (Def. Resp. to Pl. SMF ¶¶ 114, 116). On April 13, 2018, Byrne decided not to demote Fleck and instead imposed written counseling as discipline for (what he characterized as) Fleck's "technical violation" of sharing sensitive information. *Id.* at 41 (Def. Resp. to Pl. SMF ¶¶ 111–12); Dkt. 73-6 (Byrne decision letter).

Deputy Secretary Bowman also reviewed the additional evidence that Fleck provided in his response. Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 76). On May 16, 2018, Bowman rescinded most of his concurrence with the OIG report. Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 76); Dkt. 73-3 at 1 (Bowman rescission letter). He explained that "[g]iven further evidence that has been presented on this matter that was not a part of the record provided to me . . . I disagree with all of the findings in the report, except for the finding on sharing sensitive information." Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 76); Dkt. 73-3 at 1 (Bowman rescission letter). The letter was not publicly released, and OIG did not update the appendix of its report to replace Bowman's previous concurrence letter. Dkt. 58-1 at 28 (Def. Resp. to Pl. SMF ¶ 77); Dkt. 53-1 at 19 (Pl. SMF ¶ 77).

In addition to the proposed demotion, Fleck points to several adverse consequences that he claims resulted from the issuance of the OIG report. For instance, in late 2018, the Office of Accountability and Whistleblower Protection ("OAWP") opened an investigation into Fleck based on an allegation that Fleck had hired three former colleagues from the Department of the Army into VA positions. Dkt. 53-1 at 31 (Pl. SMF ¶ 147). Fleck retained counsel to represent him in the OAWP investigation. *Id.* (Pl. SMF ¶ 148).

In February 2018, before the OIG report was published, Fleck applied for a job at the Department of Defense. Dkt. 53-1 at 30 (Pl. SMF ¶ 138). The parties agree that Fleck was qualified for the role, and Fleck received an interview for the position, which took place on April 3, 2018. *Id.* (Pl. SMF ¶¶ 138–39); Dkt. 58-1 at 49 (Def. Resp. to Pl. SMF ¶ 138–39). OIG published its report four days before Fleck's interview; however, no one at the interview mentioned the report. *Id.* (Pl. SMF ¶ 142). The following day, one of Fleck's interviewers notified him that he had not received the position. *Id.* (Pl. SMF ¶ 143).

Fleck also applied to several private sector jobs in the defense industry throughout 2018. Dkt. 53-5 at 6 (Fleck Answer to Interrog. 2). The parties dispute whether these jobs paid more than Fleck's current job and whether Fleck was qualified for the vacancies. Dkt. 58-1 at 45 (Def. Resp. to Pl. SMF ¶¶ 124, 126). They agree, however, that Fleck did not receive interviews for any of these positions. *Id.*

Finally, Fleck asserts that, after the report was published, he suffered adverse effects on his health. Dkt. 53-1 at 31 (Pl. SMF ¶ 145). The parties dispute, however, whether Fleck's health problems, which

predated the issuance of the report, were caused or exacerbated by the report's issuance. Dkt. 58-1 at 51–52 (Def. Resp. to Pl. SMF ¶¶ 145–46).

B. Procedural Background

On June 20, 2018, Fleck filed a two-count complaint alleging claims under two provisions of the Privacy Act, 5 U.S.C. § 552a(g)(1)(C) and (D), Dkt. 1, which he amended on October 5, 2018. Dkt. 12. On November 15, 2018, Defendant filed a motion to dismiss the complaint, which the Court denied in a Memorandum Opinion and Order on January 3, 2020. Dkt. 21. Defendant then filed its answer, Dkt. 24, and moved for judgment on the pleadings, Dkt. 26. On February 19, 2022, the Court held an initial scheduling conference with the parties, at which it denied Defendant's motion for judgment on the pleadings and heard and granted an oral motion by Fleck to amend the complaint a second time. Min. Entry (Feb. 19, 2020). Fleck filed his second amended complaint on February 28, 2020. Dkt. 31. The parties then began a year-long period of discovery, which concluded on March 1, 2021. *See* Min. Entry (Feb. 19, 2020); Min. Order (Dec. 22, 2020). On June 14, 2021, Defendant moved to dismiss or, alternatively, for summary judgment. Dkt. 49. On August 6, 2021, Fleck opposed Defendant's motion, Dkt. 53, and moved to strike the affidavit of one of Defendant's witnesses for failure to comply with the expert-disclosure requirements of Rule 26(a)(2), Dkt. 52. Those motions are now before the Court.

II. LEGAL STANDARD

A party is entitled to summary judgment under Federal Rule of Civil Procedure 56 if it can "show[ ] that there is no genuine dispute as to any material fact and [that it] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment "bears the initial responsibility" of "identifying those portions" of the record that "demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A fact is "material" if it could affect the outcome of the litigation under governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). And a dispute is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *See Scott v. Harris*, 550 U.S. 372, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007). The Court must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor. *See Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011).

[1, 2] If the moving party carries this initial burden, the burden then shifts to the nonmoving party to show that sufficient evidence exists for a reasonable jury to find in the nonmoving party's favor with respect to the "element[s] essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* (quoting *Holcomb v. Powell*, 433 F.3d 889, 895 (D.C. Cir. 2006)). The nonmoving party's opposition, accordingly, must consist of more than unsupported allegations or denials, and must be supported by affidavits, declarations, or other competent evidence setting forth specific facts showing that there is a genuine issue for trial. *See* Fed. R. Civ. P. 56(c); *Celotex*, 477 U.S. at 324, 106 S.Ct. 2548. That is, once the moving party carries its initial burden on summary judgment, the nonmoving party must provide evidence that would permit a reasonable jury to find in its favor. *See Laningham v. U.S. Navy*, 813 F.2d 1236, 1241 (D.C. Cir. 1987). If the nonmoving party's evidence is "merely colorable" or "not sig-

nificantly probative," the Court should grant summary judgment. *Liberty Lobby*, 477 U.S. at 249–50, 106 S.Ct. 2505.

III. ANALYSIS

The Privacy Act, 5 U.S.C. § 522a, "safeguards the public from unwarranted collection, maintenance, use and dissemination of personal information contained in agency records." *Henke v. U.S. Dep't of Commerce*, 83 F.3d 1453, 1456 (D.C. Cir. 1996) (quotation marks omitted). The Act authorizes four types of civil actions. *See* 5 U.S.C. § 552a(g)(1); *Doe v. Chao*, 540 U.S. 614, 618–19, 124 S.Ct. 1204, 157 L.Ed.2d 1122 (2004). Fleck invokes two of them. First, he asserts a claim under Section 552a(g)(1)(C). That provision creates a civil action against an agency if the agency "fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination ... that may be made on the basis of such [a] record," and that failure causes "a determination [to be] made which is adverse to the individual." 5 U.S.C. § 552a(g)(1)(C).

Second, Fleck invokes Section 552a(g)(1)(D). That provision permits individuals to sue if the agency "fails to comply with any other provisions of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on [the] individual." *Id.* § 552a(g)(1)(D). As a predicate to his Section 552a(g)(1)(D) claim, Fleck says that Defendant violated two substantive provisions of the Privacy Act: Sections 552a(e)(5) and (6).

Section 552a(e)(5) is nearly identical to Section 552a(g)(1)(C). It requires an agency that maintains a system of records to "maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination." *Id.* § 552a(e)(5). Section 552a(e)(6) adds somewhat different obligations. It provides that

> [e]ach agency that maintains a system of records shall ... prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes.

Id. § 552a(e)(6). Subsection (b)(2), in turn, covers disclosures required under the Freedom of Information Act. *Id.* § 552a(b)(2).

[3] A plaintiff may recover damages under Section 552a(g)(1)(C) and (D) only if he proves that (1) the agency's violation of the Privacy Act proximately caused the adverse determination or adverse effect at issue, (2) the agency "acted in a manner [that] was intentional or willful," and (3) the plaintiff suffered "actual damages." *Id.* § 552a(g)(4); *Dickson v. Off. of Pers. Mgmt.*, 828 F.2d 32, 37 (D.C. Cir. 1987). Actual damages under the Privacy Act are limited to pecuniary harms only and do not extend to recoveries for "loss of reputation, shame, mortification, injury to the feelings, and the like." *FAA v. Cooper*, 566 U.S. 284, 295–97, 132 S.Ct. 1441, 182 L.Ed.2d 497 (2012) (quotation marks omitted).

Fleck points to several alleged inaccuracies and omissions in the OIG report that, he claims, violated the Privacy Act and caused him actual damages in the form of lost job opportunities, legal fees, and increased health care costs. Defendant, in turn, argues that Fleck cannot maintain a Privacy Act suit against it because the OIG report is exempt from the substantive provisions of Privacy Act. And even if it is not, Defendant asserts that Fleck has

failed to establish a material dispute of fact as to whether it violated any of the substantive provisions of the Privacy Act; whether any such violations were intentional or willful; and whether the violations proximately caused Fleck actual damages. The Court will address each of these arguments in turn.

A. Exemptions

Defendant maintains that the Court need not examine whether Fleck has adduced sufficient evidence to support a Privacy Act claim because two exemptions to the Privacy Act apply in this case. First, it claims that Fleck cannot assert a violation of Section 552a(e)(5) because the OIG report at issue is "part of a system of records that the VA has exempted from the requirements of section 552a(e)(5) and from the civil remedy provisions of Section 552a(g) pursuant to 5 U.S.C. § 552a(j)(2)." Dkt. 49 at 11. Second, Defendant contends that the report is exempt from Section 552a(e)(6) because the disclosure of the report "would be required under the Freedom of Information Act," pursuant to Section 552a(b)(2). *Id.* at 13 (quotation marks omitted).

Defendant raised each of these exemptions in its motion to dismiss. *See* Dkt. 21 at 9, 19. The Court deferred decision as to whether the exemptions barred Fleck's claims, however, because the facts necessary to resolve Defendant's Section 552a(j)(2) affirmative defense were not alleged on the face of the complaint, *id.* at 11–12, and because Defendant's argument with respect to Section 552a(e)(6)'s Freedom of Information Act ("FOIA") exemption was underdeveloped, *id.* at 19–20. Now that the parties have completed discovery, Defendant has reasserted its affirmative defenses. At this stage, the Court concludes that the undisputed facts establish that Section 552a(j)(2)'s exemption bars Fleck's claim under Section 552a(g)(1)(C) and his Section 552a(g)(1)(D) claims predicated on alleged violations of Section 552a(e)(5). Accordingly, the Court will grant Defendant's motion for summary judgment with respect to those claims. But, the Court also concludes that Section 552a(e)(6)'s FOIA exemption does not apply in this case, and thus Defendant is subject to potential liability under Section 552a(g)(1)(D) for any violations of Section 552a(e)(6).

1. *Section 552a(j)(2) Exemption*

Section 552a(j)(2) of the Privacy Act permits the "head of any agency" to "promulgate rules . . . to exempt any system of records within the agency from any part of [the Privacy Act]" "if the system of records is," as relevant here,

> maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of . . . information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual . . . .

5 U.S.C. § 552a(j)(2). The Act excludes certain enumerated subsections from this exemption, however, including Section 552a(e)(6). *Id.* § 552a(j).

Based on this provision, Defendant argues that the Section 552a(e)(5) predicate to Fleck's Section 552a(g)(1)(D) cause of action, as well as his Section 552a(g)(1)(C) cause of action, *see Lugo v. Dep't of Justice*, 214 F. Supp. 3d 32, 38–39 (D.D.C. 2016), is barred because the OIG report is part of a system of records that the VA

has exempted under Section 552a(j)(2) and because the component of the VA that maintains that system of records "performs as its principal function any activity pertaining to the enforcement of criminal laws." 5 U.S.C. § 552a(j)(2). To establish the exemption's applicability, Defendant submits a declaration from David Johnson, who has served as the Assistant Inspector General for Investigations since May 2019. Dkt. 49-5 at 1 (Johnson Decl. ¶ 2). Drawing on his knowledge of the VA OIG, including its organization and functions, and the systems of records that OIG uses to maintain information related to its investigations, Johnson attests, among other things, to the following:

- "The VA OIG is vested with law enforcement authority pursuant to Section 6(e)(3) of the Inspector General Act of 1978." *Id.* at 2 (Johnson Decl. ¶ 3).
- The Attorney General has issued guidelines for Inspectors General, including the VA OIG, that confirm that Inspectors General have "concurrent responsibility" with the FBI to "prevent[ ] and detect[ ] fraud and other criminal activity within their agencies." *Id.* (Johnson Decl. ¶ 3).
- "The Office of Investigations is the directorate within the VA OIG that investigates potential crimes and other violations of law involving VA programs and operations." *Id.* (Johnson Decl. ¶ 4).
- "The principal function of this directorate was, and is, investigative activity pertaining to the enforcement of criminal laws." *Id.* at 2–3 (Johnson Decl. ¶ 4).
- "In the 2017-2018 time frame . . ., this directorate was . . . staffed by more than 200 employees, including approximately 170 special agents (OPM series 1811)." *Id.* at 2 (Johnson Decl. ¶ 4).
- "During the time period at issue, the VA OIG's Administrative Investigations Division was located within the Office of Investigations and was staffed by approximately 7-10 investigators (OPM series 1810)." *Id.* at 3 (Johnson Decl. ¶ 4).
- "The investigation into potential conflicts of interest, nepotism, and false statements by Mr. Fleck was conducted by the Administrative Investigations Division." *Id.* at 3–4 (Johnson Decl. ¶ 5).
- "[A]lthough investigations undertaken by the Administrative Investigations Division generally focused on possible administrative violations, they easily could encompass potential violations of criminal law and result in a report of an investigation into suspected criminal activity." *Id.* at 3 (Johnson Decl. ¶ 4).
- "As is typical in such investigations, the investigation into Mr. Fleck's alleged conduct was undertaken with attention to whether the alleged conduct violated any criminal laws . . ., including 18 U.S.C. § 208 [acts affecting a personal financial interest] and 18 U.S.C. § 1001 [false statements]." *Id.* at 4 (Johnson Decl. ¶ 6).
- "During the course of the investigation, the VA OIG presented the case twice to the United States Attorney's Office for the District of Columbia for prosecution decisions, once in August 2017 and a second time in October 2017." *Id.* at 4 (Johnson Decl. ¶ 7).
- "The records collected and created as part of this investigation, including the final report, are contained in a system of records (11VA51) that is maintained by the Office of Investi-

> gations. Those records encompass information pertaining to criminal law enforcement-related activities because they were compiled for the purposes of investigating possible violations of federal criminal laws (e.g., 18 U.S.C. § 208 and 18 U.S.C. § 1001), along with potential administrative violations." *Id.* at 4 (Johnson Decl. ¶ 8) (citation omitted).

According to Defendant, these attestations demonstrate that the OIG report qualifies for the Section 552a(j)(2) exemption because the Secretary of the VA, by rule, has exempted the relevant system of records, 11VA51, from the Privacy Act pursuant to Section 552a(j)(2). Dkt. 49 at 11; *see* 38 C.F.R. § 1.582(b)(1) (exempting 11VA51).

Fleck disagrees and asserts that a genuine dispute of material fact exists as to whether VA OIG "perform[s] as its principal function any activity pertaining to the enforcement of criminal laws." Dkt. 56 at 36. First, Fleck points out that it is not sufficient that *one* of the agency's functions is related to investigating criminal conduct; rather, it must be the agency's "[c]hief," "primary," or "most important" one. *Id.* at 38 (citing *Principal*, Black's Law Dictionary (11th ed. 2019)). Second, he asserts that the only evidence in the record with respect to OIG's "principal function" comes from the Johnson Declaration. *Id.* at 37–38. But that declaration, Fleck says, is inadmissible because it contains expert testimony that was not timely disclosed under Federal Rule of Civil Procedure 26(a)(2); because Johnson offers improper legal opinions about the ultimate question of law for OIG's affirmative defense; and because Johnson has no personal knowledge of the OIG's activities during the time in question. *Id.* at 38 & n.14; Dkt. 52 at 3. Accordingly, Fleck moves to strike the Johnson Declaration from the record and preclude the government from asserting the affirmative defense as a sanction. Dkt. 52 at 1–2.

[4] As an initial matter, the Court will deny Fleck's motion to strike the Johnson Declaration. The Court agrees with Defendant that Johnson is properly viewed as a fact witness. *See* Dkt. 57 at 3. As Johnson explains in his declaration, the information he provides about the Office of Investigations' historical organization, functions, and systems of records is knowledge that he has "obtained in connection with [his] duties" as the head of that directorate, as well as his "review of investigative records and the report issued regarding Robert Fleck." *See* Dkt. 49-5 at 1–2 (Johnson Decl. ¶ 2). Thus, to the extent that Johnson's testimony draws an inference with respect to the "principal function" of the Office of Investigations, that inference is a lay opinion because it does not result from a "process of reasoning which can be mastered only by specialists in the field," but rather observational "process[es] of reasoning familiar in everyday life." Fed. R. Evid. 701, Advisory Committee's note to 2000 amendment.

Cases involving testimony about business operations are instructive. In that context, numerous courts have held that Federal Rule of Evidence 701 does not restrict business owners or officials from testifying or offering lay opinions about their office's operations, so long as their testimony or opinion is based on particularized knowledge they have obtained in the course of their duties. *See, e.g.*, *Tex. A&M Rsch. Found. v. Magna Transp., Inc.*, 338 F.3d 394, 403 n.12 (5th Cir. 2003); *F.T.C. v. Cap. City Mortg. Corp.*, No. 98-237, 2002 WL 34703470, at *2-3, 2002 U.S. Dist. LEXIS 28693, at *4–6 (D.D.C. Mar. 28, 2002). The Advisory Committee notes to Rule 701, moreover, expressly state that the 2000 amendment to Rule 701, which clarified that lay opinion testimony cannot

be "based on scientific, technical, or other specialized knowledge," did "not purport to change" the pre-existing admissibility of lay opinions based on "the particularized knowledge that [an owner or officer of a business] has by virtue of his or her position in the business." Fed. R. Evid. 701, Advisory Committee's note to 2000 amendment. There is no reason why the same analysis should not also apply to the structure and practices of government offices.

Nor does the fact that some of the information to which Johnson attests predates his arrival at OIG render his testimony improper. Johnson represents that he obtained all of the information in his declaration in the course of his duties as the head of the Office of Investigations. In that capacity, Johnson undoubtedly has access to and has acquired knowledge about the past procedures, structure, and practices of the office he leads. That is all that is required to establish personal knowledge.

[5, 6] Finally, the Court observes that Johnson's inference that the "principal function" of the Office of Investigations was "investigative activity pertaining to the enforcement of criminal laws" is not an improper legal conclusion. The extent to which an activity is a "principal function" of an agency or component thereof is an empirical question, not a legal conclusion. For that reason, Fleck's invocation of the D.C. Circuit's opinion in *Burkhart v. Washington Metropolitan Area Transit Authority*, 112 F.3d 1207, 1214 (D.C. Cir. 1997)—which concern a witness's opinion testimony regarding a "legal term of art"—is inapt. Johnson may testify to an inference he has drawn based on his particularized knowledge of the structure and activities of the Office of Investigations. Accordingly, the Court will deny Fleck's motion to strike.

[7] Based on the undisputed facts set forth in the Johnson Declaration, the Court concludes that Defendant has met its burden to show that the OIG report is maintained in a system of records that is exempt from the requirements of Section 552a(e)(5) and from the cause of action under Section 552a(g)(1)(C). The Court notes at the onset that Fleck directs his arguments at the functions of the VA OIG *as a whole*. Those arguments miss the mark, however, because the appropriate unit of analysis is the VA OIG *Office of Investigations*, which is the "component" of the VA that "maintains" 11VA51, the system of records at issue. This conclusion follows from the VA rule that exempts 11VA51 from the requirements of the Privacy Act, which lists the "location" of the system of records as the "Office of Investigations" and describes the records within this system as "maintained" by the "Assistant Inspector General for Investigations" and the "OIG Office of Investigations." Privacy Act of 1974; System of Records, 73 Fed. Reg. 46713, 46715, 46716 (Aug. 11, 2008). In invoking the exemption, the Secretary of the VA determined that the relevant "component" for the purpose of Section 552a(j) is the Office of Investigations, not the VA OIG more broadly or, for that matter, the Administrative Investigations Division within the Office of Investigations.

The Court considers the possibility that the term "component thereof" might limit the kinds of subdivisions within an agency that qualify for purposes of Section 552a(j) to only the largest units, such that VA OIG might qualify but the Office of Investigations might not. The Court, however, is unaware of any precedent supporting that reading of Section 552a(j)(2), and dictionaries define the word "component" broadly to mean "a constituent part," *Component*, Webster's Third New International Dictionary (1993). The D.C. Circuit, moreover, has indicated that individual prisons

within the Bureau of Prisons system qualify as "component[s]" of a law enforcement agency for the purposes of Section 552a(j)(2), *Duffin v. Carlson*, 636 F.2d 709, 713 (D.C. Cir. 1980), which suggests that an office or department need not be the largest subdivision within the agency in order to qualify as a "component." Finally, the fact that the Office of Investigations was, at the relevant time, "composed of multiple headquarters offices/divisions and seven regional field offices staffed by more than 200 employees," Dkt. 49-5 at 2 (Johnson Decl. ¶ 4), belies any suggestion that it lacks sufficient gravity to constitute a "component" of the VA.

[8] With respect to the *Office of Investigations*, the undisputed facts show that the "principal function" of the office is to "perform[ ] . . . any activity pertaining to the enforcement of criminal laws." 5 U.S.C. § 552a(j)(2); *cf. Tijerina v. Walters*, 821 F.2d 789, 795 (D.C. Cir. 1987) ("[T]he [VA] OIG has a principal function of law enforcement."). Specifically, the Johnson Declaration establishes that (1) the Office of Investigations "investigates potential crimes and other violations of law involving VA programs and operations," Dkt. 49-5 at 2 (Johnson Decl. ¶ 4), and (2) that an overwhelming percentage of the investigators at the Office of Investigations—170 out of 200—were criminal investigators (OPM series 1811), versus seven to ten employees who were administrative investigators (OPM series 1810), *id.* at 2–3 (Johnson Decl. ¶ 4). The Johnson Declaration further establishes that, because VA OIG's investigation of Fleck involved an inquiry into whether Fleck "violated any criminal laws," the "records collected and created as part of this investigation, including the final report, are contained in a system of records (11VA51) that . . . encompass information pertaining to criminal law enforcement-related activities because they were compiled for the purposes of investigating possible violations of federal criminal laws." *Id.* at 4 (Johnson Decl. ¶ 8). That system of records, in turn, has been exempted by rule from certain provisions of the Privacy Act, including, as relevant here, Section 552a(e)(5). *See* 38 C.F.R. § 1.582(b)(1); 73 Fed. Reg. 46713.

Fleck offers no evidence to the contrary. Rather, he points to evidence that administrative investigators within the Administrative Investigation Division ran his investigation and that OIG repeatedly referred to the inquiry as an "administrative investigation." *See* Dkt. 53-1 at 33–34 (Pl. SMF ¶¶ 159–65); Dkt. 58-1 at 54–56 (Def. Resp. to Pl. SMF ¶¶ 159–65). That evidence, however, is irrelevant to the inquiry under Section 552a(j)(2), which asks only (1) if the agency component that *maintains* the relevant system of records performs as its principal function activities pertaining to the enforcement of the criminal laws and (2) whether the record at issue was included in a system of records that consists of "information compiled for the purpose of a criminal investigation, including reports of informants and investigators." 5 U.S.C. § 552a(j)(2). As discussed, the component that maintained 11VA51 was the Office of Investigations, not the Administrative Investigation Division, and the undisputed evidence shows that 11VA51 consists of information pertaining to criminal law enforcement-related activities.

Thus, the Court concludes that the OIG report is part of a "system of records" that is "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws" and which consists of "information compiled for the purpose of a criminal investigation." *Id.* Because the Secretary of Veterans Affairs has exempted 11VA51 from the requirements of Section 552a(e)(5), *see*

73 Fed. Reg. at 46717, the Court concludes that Fleck's claims based on violations of that section are barred by Section 552a(j)(2).

[9, 10] The VA's regulation also purports to exempt the agency from Section 552a(g), which includes both of Defendant's causes of action in this case. As the D.C. Circuit has explained, however, that exemption is unenforceable. *See Tijerina*, 821 F.2d at 795–96. Section 552a(g) is not a substantive provision; it is a grant of jurisdiction and waiver of sovereign immunity "directed not towards agencies but towards courts and aggrieved individuals." *Id.* "Although agencies may exempt *systems of records* from the Act, they may not exempt *themselves*." *Lugo*, 214 F. Supp. 3d at 39 (citing *Tijerina*, 821 F.2d at 795). Thus, "an agency has no power under the Act to exempt itself from the civil liability provisions of subsection (g)." *Tijerina*, 821 F.2d at 795; *Hurt v. Cromer*, No. 09-5224, 2010 WL 8753255, at *1 (D.C. Cir. June 11, 2010) (per curiam).

[11] There is an exception to this rule, however, with respect to Section 552a(g)(1)(C). As this Court has previously held, "because the slight variation in wording between (e)(5) and (g)(1)(C) is 'of no substantive significance,'" a plaintiff has "no cause of action under subsection (g)(1)(C)" if his suit is based on a record that is exempt under subsection (e)(5). *Lugo*, 214 F. Supp. 3d at 39 (quoting *Doe v. United States*, 821 F.2d 694, 699 (D.C. Cir. 1987)). Accordingly, the Court will grant Defendant's motion for summary judgment with respect to Fleck's Section 552a(g)(1)(C) claims and those of Fleck's Section 552a(g)(1)(D) claims that are premised on violations of Section 552a(e)(5).

2. *Section 552a(e)(6) Exemption*

All is not lost for Fleck, however. Because Section 552a(j)(2) expressly prohibits an agency from exempting records from the requirements of Section 552a(e)(6), Fleck's Section 552a(g)(1)(D) claims predicated on alleged violations of Section 552a(e)(6) still remain. Defendant sees things differently. In its view, a second exemption bars liability with respect to Fleck's claims predicated Section 552a(e)(6). Specifically, it observes that Section 552a(e)(6)'s requirement that an agency make reasonable efforts to assure that records are accurate, complete, timely, and relevant prior to dissemination does not apply if "the dissemination is made pursuant to subsection (b)(2)" of the Privacy Act. Dkt. 49 at 13 (quoting 5 U.S.C. § 552a(e)(6)). Subsection (b)(2), in turn, refers to situations in which the "disclosure of [a] record would be . . . required under section 552 of this title"—that is, the Freedom of Information Act. 5 U.S.C. § 552a(b)(2).

The parties agree that the dissemination of the OIG report at issue was not made pursuant to a FOIA request. Defendant insists, however, that the OIG report nevertheless falls within the FOIA exemption to Section 552a(e)(6). Its argument why takes some unpacking, but, in essence, Defendant suggests that the D.C. Circuit, in *Bartel v. FAA*, 725 F.2d 1403 (D.C. Cir. 1984), recognized some ambiguity in the text of Section 552a(b)(2), and, in so doing, left the door open for an agency "to invoke Section 552a(b)(2) when another source of mandatory disclosure (such as custom or another federal statute) *requires* the public disclosure of the record independent of FOIA." Dkt. 49 at 14–15 (citing *Bartel*, 725 F.2d at 1413). This interpretation of subsection (b)(2) comes from long-standing Office of Management and Budget guidelines, which Defendant maintains are enti-

tled to deference. *Id.* at 15. And since OIG reports are required by statute to be disclosed publicly, *see* 38 U.S.C. § 312(c)(1)(C), Defendant submits that OIG reports should be treated as records that "would be ... disclosed" pursuant to FOIA for the purpose of Section 552a(e)(6). Dkt. 49 at 18.

In *Bartel*, the D.C. Circuit considered whether a disclosure was exempt from the Privacy Act because it "only imparted information that the [defendant] would have been required to release pursuant to a Freedom of Information Act ... request." 725 F.2d at 1411. The disclosure at issue in *Bartel* was not made in response to a FOIA request, but the defendant nonetheless argued that "[S]ection 552a(b)(2) ... allow[s] unrestricted disclosure [of information] unless the information falls within a FOIA exemption, whether or not the information has been requested." *Id.* at 1412. The D.C. Circuit began by observing that "the language of section 552a(b)(2) standing alone may be subject to different interpretations" with respect to whether the phrase "would be ... required under [FOIA]" refers to information that could, hypothetically, be released pursuant to a FOIA because it does not fall within a FOIA exemption, or whether it instead refers only to information that is actually released pursuant to a FOIA request. *Id.* The court of appeals ultimately determined, however, that subsection (b)(2) "must be read generally to preclude nonconsensual disclosure of Privacy Act material *unless the agency acts pursuant to a FOIA request.*" *Id.* (emphasis added).

The D.C. Circuit reached this conclusion by examining "the differing thrusts of the FOIA and the Privacy Act." *Id.* It explained that "FOIA was meant to limit agency discretion to deny public access to information in its files," while "[t]he Privacy Act, on the other hand, was designed to limit agency discretion to reveal personal information in its files." *Id.* And although the two statutes "undoubtedly ... overlap and even conflict" in some areas, the court reasoned that "neither statute was passed to increase agency discretion as to what to disclose or hold back," and thus "[i]t would be unreasonable to read ... FOIA, as appellees do, as *increasing agency discretion* to disclose information where disclosure is otherwise prohibited by the Privacy Act." *Id.* It follows, the court concluded, that "[o]nly when the agency is *faced with a FOIA request* for information that is not within a FOIA exemption, and therefore has no discretion but to disclose the information, does the FOIA [exemption] to the Privacy Act come into play." *Id.* (emphasis added).

Although the D.C. Circuit considered "this reasoning by itself" to be "persuasive," it also noted that the Privacy Act's legislative history [2] and the Office of Management and Budget's Guidelines on the Act ("OMB Guidelines"), *see* 40 Fed. Reg. 28949–78 (July 1, 1975), "supported" its view. In particular, the court pointed to the following language from the OMB Guidelines' discussion of subsection (b)(2), which states:

> Given the use of the term "required," agencies may not voluntarily make public any record which they are not required to release (i.e. those that they are permitted to withhold) without the consent of the individual ....

2. With respect to the Privacy Act's legislative history, the Court observed that early versions of the bill exempted an agency from the Act's disclosure requirements "when disclosure would be required *or permitted* pursuant to ... the Freedom of Information Act," but "the final compromise version of the Act ... limited [the FOIA exemption] to those disclosures *required*, and not to all those *permitted*, under the FOIA." *Bartel*, 725 F.2d at 1413.

> Records which have traditionally been considered to be in the public domain and are required to be disclosed to the public, such as many final orders and opinions of quasi-judicial agencies, press releases, etc. may be released under this provision without waiting for a specific Freedom of Information Act request .... Records which the agency would elect to disclose (i.e., they are permitted to be withheld under the FOIA) may only be released to the public under the "routine use" provision.

Bartel, 725 F.2d at 1412–13 (quoting OMB Guidelines at 21–22, 40 Fed. Reg. at 28954). Although the D.C. Circuit cited this language as general support for its conclusion that subsection (b)(2)'s applies only when the agency is "required" to disclose information pursuant to a FOIA request, the court also observed that the OMB Guidelines "suggest a possible exception to this interpretation for information that is traditionally released by an agency to the public without a[ ] FOIA request." *Id.* at 1413. At the end of the day, however, the court concluded that it "need not decide whether such an exception is proper, or if so what its exact scope may be," because the disclosures in *Bartel* were not such disseminations. *Id.*[3]

Because VA OIG reports are "required to be disclosed to the public" by statute, 38 U.S.C. § 312(c)(1)(C), Defendant seizes on this last passage in *Bartel*'s discussion of the exemption to urge the Court to accord *Chevron* deference to the OMB's interpretation of subsection (b)(2) and recognize that the OIG report "may be released under [subsection (b)(2)] without waiting for a specific [Freedom of Information Act] request" and, therefore, is exempt from Section 552a(e)(6). Dkt. 49 at 16 (citing 40 Fed. Reg. 28954); *id.* at 15 (citing *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)); *see also Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1120 (D.C. Cir. 2007) ("Congress explicitly tasked the OMB with promulgating guidelines for implementing the Privacy Act, and we therefore give the OMB Guidelines 'the deference usually accorded interpretation of a statute by the agency charged with its administration.' ") (citation omitted) (quoting *Albright v. United States*, 631 F.2d 915, 920 n.5 (D.C. Cir. 1980)). The Court is unpersuaded for several reasons.

[12] First, Congress might reasonably have opted to exempt documents from the Privacy Act that are traditionally considered to be part of the public domain or that are subject to mandatory disclosure under a different statutory scheme, that is not the statute that it enacted. Rather, Section 552a(e)(6) requires agencies to "make reasonable efforts to assure that ... records [about an individual] are accurate" before "disseminating" those records outside the government, "unless the dissemination is made *pursuant to subsection (b)(2)*"—and subsection (b)(2) references *only* FOIA and no other statute. Congress could have easily written Section 552a(e)(6) to exempt records disclosed pursuant to any other statutory mandate or even pursuant to Section 552a(b)(3), which concerns disclosures "for a routine use," but it did

3. In its memorandum in support of dismissal, Defendant cites to two cases from this district that apply the interpretation of subsection (b)(2) set forth in the OMB Guidelines on the theory that *Bartel* "recognized [an] exception to th[e] general rule [requiring a FOIA request] for information traditionally released to the public without ... a [FOIA] request." *Tripp v. Dep't of Defense*, 193 F. Supp. 2d 229, 236 (D.D.C. 2002); *accord Chang v. Dep't of Navy*, 314 F. Supp. 2d 35, 42 (D.D.C. 2004). Neither decision, however, considers the next line of *Bartel*, in which the D.C. Circuit asserts that it is "not decid[ing] whether such an exception is proper." 725 F.2d at 1413.

not do so; instead, it limited the exemption to the dissemination of records pursuant to FOIA. The Court cannot read into the Privacy Act what Congress did not place there, nor does *Chevron* deference permit an agency or the Court to disregard the plain terms of a statute. *See, e.g.*, *United States v. Mead Corp.*, 533 U.S. 218, 227, 121 S.Ct. 2164, 150 L.Ed.2d 292 (2001) ("[A] regulation is [not] binding in the courts [if it is] ... manifestly contrary to the statute."); *Scarborough v. Harvey*, 493 F. Supp. 2d 1, 13 n.28 (D.D.C. 2007) ("[T]o the extent that the OMB Guidelines ... contradict the plain language of the Privacy Act itself, they should be accorded no special interpretive weight.").

The limitation of Section 552a(b)(2)'s exemption to FOIA is a sensible one, moreover, because that exemption "represents a Congressional mandate that the Privacy Act not be used as a barrier to FOIA access." *Greentree v. U.S. Customs Serv.*, 674 F.2d 74, 79 (D.C. Cir. 1982). Public access to agency records pursuant to FOIA would be stymied if the agency always had to obtain the consent of an individual (as Section 552a(b) otherwise requires) before that individual's records could be released pursuant to a FOIA request.

[13] Second, although *Bartel* noted that "the language of [S]ection 552a(b)(2) *standing alone* may be subject to different interpretations," 725 F.2d at 1412 (emphasis added), courts must exhaust all of the traditional rules of statutory interpretation before invoking *Chevron* deference, *see Chevron*, 467 U.S. at 843 n.9, 104 S.Ct. 2778, and *Bartel* goes on to hold—in the very next clause—that Section 552a(b)(2) "*must be read* generally to preclude nonconsensual disclosure of Privacy Act material unless the agency acts *pursuant to* a FOIA request," 725 F.2d at 1412 (emphases added). When subsection (b)(2) is read within the broader context of subsection (b), moreover, it becomes clear that the phrase "would be ... required under [FOIA]" refers only to disclosures made subject to an actual FOIA request, not disclosures that could be made under some hypothetical FOIA request. To illustrate, subsection (b) provides that "[n]o agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency," without the prior approval of the individual to whom the record pertains, "unless disclosure of the record would be"—"*to*" one of nine categories of recipients, 5 U.S.C. § 552a(b)(1), (4)–(10), (12) (emphasis added), "*for* a routine use," *id.* § 552a(b)(3) (emphasis added), "*pursuant* to the order of a court," *id.* § 552a(b)(11) (emphasis added), or "*required* under [FOIA]," *id.* § 552a(b)(2) (emphasis added). Because each of the surrounding provisions refers to actual—not hypothetical—disclosures, the same must apply to subsection (b)(2). *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 569–70, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995).

[14] To be sure, *Bartel* declined to decide whether the OMB Guidelines' exception for information that is traditionally released to the public without a FOIA request is "proper." 725 F.2d at 1413. But the OMB Guidelines' interpretation of subsection (b)(2) cannot be reconciled with *Bartel*'s reasoning or the overall structure of Section 552a(b). In holding that "the [FOIA exemption] is only invoked when the agency acts pursuant to a FOIA request," *id.* at 1413 n.18, *Bartel* necessarily construed the phase "would be" to refer to actual, not hypothetical, disclosures under FOIA. And, as explained above, this conclusion is consistent with the surrounding provisions of Section 552a(b), all of which contemplate actual disclosures. Because, as a basic rule of statutory interpretation, the

same statutory phrase cannot simultaneously hold two incompatible meanings, *see Clark v. Martinez*, 543 U.S. 371, 386, 125 S.Ct. 716, 160 L.Ed.2d 734 (2005), the phrase "would be" cannot refer to hypothetical FOIA disclosures when information is required to be or is traditionally released to the public, but actual disclosures in all other contexts.

Finally, the Court has no quarrel with the proposition that a specific mandatory-disclosure provision trumps a more general prohibition on disclosure like Section 552a(b) of the Privacy Act. *See Morton v. Mancari*, 417 U.S. 535, 550–51, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974). But, importantly, the claims in this case do not challenge the *release* of the OIG report but, rather, OIG's purported failure to ensure that the material contained in that report was accurate and complete "prior to disseminat[ion]," 5 U.S.C. § 552a(e)(6). Absent a specific provision that states otherwise, then, the fact that VA OIG reports must be publicly disclosed does not by itself absolve Defendant of the requirement to ensure that they are accurate and complete.

Accordingly, the Court concludes that the dissemination of the OIG report in this case was not "made pursuant to subsection (b)(2)," and thus, the report is not exempt from the requirements of Section 552a(e)(6).

B. Privacy Act Violations

Turning to the merits, Section 552a(g)(1)(D) permits a plaintiff to recover damages when an agency "fails to comply with any ... provision of [the Privacy Act], or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual." 5 U.S.C. § 552a(g)(1)(D). As discussed, although Fleck alleges violations of Section 552a(e)(5) and (e)(6), he may recover only for violations of Section 552a(e)(6), which provides that an agency shall, "prior to disseminating any record about an individual to any person other than an agency, ... make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes." *Id.* § 552a(e)(6).

Fleck argues that OIG's report violates Section 552a(e)(6) because it "contains numerous inaccurate statements of fact and omits exculpatory and mitigating evidence." Dkt. 56 at 15. These inaccuracies and omissions, Fleck claims, violated the prevailing professional standards for Office of Inspector General investigations and the VA OIG's own internal standards and, thus, "fell below any arguable standard of 'reasonableness.' " *Id.* The Court concludes that Fleck has adduced sufficient evidence to create a genuine dispute of material fact as to whether the report's omissions violated OIG's obligation to undertake "reasonable efforts" to ensure that its report was "accurate" and "complete." 5 U.S.C. § 552a(e)(6).

In support of his Privacy Act claims, Fleck submits an expert report from John Hartman, a former Deputy Inspector General with over 30 years' experience in three Offices of Inspector General in the federal government. Dkt. 56-2 at 2. Hartman analyzes VA OIG's conduct in Fleck's case according to professional standards issued by the Council of the Inspector General on Integrity and Efficiency ("CIGIE") and VA OIG's own internal guidelines, which incorporate the CIGIE standards. *Id.* at 3, 8–11. Based on these standards, Hartman identifies a number of "inconsistencies between the VA OIG's actions on this case and CIGIE's standards and the VA OIG's internal guidance," which, in his professional opinion, render the report "both inaccurate and incomplete in several material ways." Dkt. 56-2 at 12.

First, Hartman observes that Deputy Secretary Bowman's second concurrence letter, which retracts his previous concurrence and "raises questions about the accuracy and completeness of the [r]eport, is not included with the public [r]eport, thus making the [r]eport incomplete and inaccurate." *Id.* at 13.

Second, Hartman finds fault with OIG's failure to solicit Fleck's comments on "all substantiated findings" near "the conclusion of the investigation," so that Fleck could respond with "potentially exculpatory or mitigating information," in violation of VA OIG Directive 51Q 101. *Id.* Hartman notes, in particular, that after Fleck was last interviewed, VA OIG completed "a number of additional investigative steps, including follow-up interviews with witnesses" and "requested, obtained, and reviewed telephone records." *Id.*

Third, Hartman opines that "[r]elevant and material information was not included in the VA OIG Report and in some instances, not obtained during the investigation." *Id.* According to Hartman, these omissions show that VA OIG "report[ed] on evidence sufficient to substantiate the allegations without attempting to present potentially exculpatory or contradictory evidence or information that adds relevant context to those findings." *Id.* In particular, Hartman points to eleven examples of (what he regards as) material omissions:

(1) Hartman faults the VA OIG for failing to interview Buonocore about the June 2016 call during which Wiercinski was first suggested as a candidate, even though Fleck told OIG investigators during his interview that it was Buonocore who suggested his wife, and not he. *Id.* at 14. Buonocore later executed a declaration in which he explained that he first suggested Wiercinski as a candidate and that he did not recall Fleck ever recommending Wiercinski for the position, which contradicts the OIG report's finding that Fleck "actively and openly solicited" his wife's employment during that call. *Id.*

(2) Although the report concludes that Fleck "used his position as an SES manager . . . to advocate for the employment of his wife," Hartman opines that the report omits material and relevant context that Fleck did not advocate for his wife while the Best Qualified Panel was reviewing candidates, including testimony from all three members of the Best Qualified Panel that they received no pressure to hire Wiercinski and that she was selected because she was far and away the most qualified candidate. *Id.* at 15–17.

(3) Hartman further criticizes the report for omitting important context about the testimony and origins of the e-discovery position. *Id.* at 17–18. Although the report concludes that Fleck "participated in establishing" the e-discovery position "for" his wife, Dkt. 49-3 at 20, Hartman observes that the OIG report omits testimony from Cameron Gore and Benjamin Diliberto that establishes that the need for an e-discovery position had been discussed at VA OGC before Fleck's arrival at OGC in May 2016. Dkt. 56-2 at 17–18.

(4) Hartman indicates that the OIG report does not address conflicting testimony regarding Fleck's apparent participation in conversations about converting a general staff attorney position in the Real Property Law Group to an e-discovery position. *Id.* at 18–19. Although the report quotes Cameron Gore's recollection that Fleck was involved in a collective discussion, Hartman observes that it omits testimony from others who did not remember Fleck having involvement and instead recalled a different individual making the decision to use the general attorney position in Real Property Law Group for an e-discovery position. *Id.* at 19.

(5) Hartman opines that the report "does not fully address potentially material exculpatory information regarding Mr. Fleck's involvement in the position description or vacancy announcement." *Id.* at 19. Hartman acknowledges that the report "outlines various emails and discussions where Mr. Fleck was a participant," but he notes that the report "does not establish what impact, if any, he had on the document's content." *Id.* In addition, he observes that the report omits testimony from Cameron Gore, in which he states: "to suggest that [Fleck] created the [position description] and there was some way that he drafted it to steer it, um, that's, that's bogus. That's bogus." *Id.*

(6) Hartman also takes issue with the OIG report's conclusion that "[t]here is a direct connection between Mr. Fleck referring his wife to Mr. Gore, and Mr. Gore being influenced by that referral." Dkt. 49-3 at 20. In Hartman's view, this statement is misleading because Gore told OIG investigators that Fleck had no influence over the hiring decision. Dkt. 56-2 at 20. In particular, Gore stated during his interview: "I assure you, if Fleck had ever tried to influence me, and, and if he had—and, and I say this humbly, but I'm going to be honest with you. Bob Fleck does not have a bit of influence over me." Gore also told investigators: "if [Wiercinski] wasn't the best qualified, she wasn't going to get selected" and "the review process, the recruitment process, came through my section. [Fleck] had no say in that." *Id.* Nevertheless, Hartman explains, the OIG report omits this context, which "may have provided a more complete presentation of the facts about the entire hiring process and . . . more completely and accurately characterize[d] his influence on the final hiring decision." *Id.* at 21.

(7) Although the report accurately describes Wiercinski as the e-discovery coordinator attorney assigned to support the Contract Litigation Team, which Fleck managed, Hartman criticizes the report for omitting testimony that, because Wiercinski was a member of the Real Property Law Group and not the Procurement Law Group, Wiercinski did not report to Fleck, and Fleck did not control her "assignments [or] feedback." *Id.* at 21–22. The exclusion of this evidence, Hartman opines, means that the report provides incomplete context regarding whether "Mr. Fleck actually had any role in assigning work to Ms. Wiercinski or influencing her appraisal—not just a potential role." *Id.* at 23.

(8) Hartman contends that report "does not contain sufficient evidence" to support the conclusion that Fleck and Wiercinski made "false statements about when [Wiercinski] was selected for the e-Discovery position to lessen the potential consequences" of sharing VA sensitive data and that those statements were "not simple lapses in memory or confusion regarding dates." *Id.* at 23.

(9) Hartman asserts that the report also provides incomplete information about the ethics trainings that Fleck received. *Id.* at 23. Although the report accurately states that Fleck, Gore, and Hipolit received ethics training regarding the hiring of relatives, Hartman notes that the report fails to mention that the training occurred on September 23, 2016, which was *after* Fleck's alleged advocacy of Wiercinski. *Id.*

(10) Hartman also criticizes the report's failure to provide additional detail regarding the call log analysis that OIG undertook to verify Fleck's and Wiercinski's claim that Gore informally offered her the position in mid to late September 2016. Hartman points out that, during the month of September, Wiercinski received several calls from numbers listed as "Unavailable."

Id. at 24. The report, however, does not mention the unavailable calls nor does it identify what steps, if any, investigators took to determine if these may have been from Gore. *Id.*

(11) Finally, Hartman faults VA OIG for insufficiently informing VA ethics officials about the results of its investigation and the allegations of ethical misconduct against Fleck. Although VA OIG communicated with ethics officials to determine if anyone had sought contemporaneous ethics advice regarding the Fleck/Wiercinski situation, Hartman observes that it is unclear whether VA OIG informed those officials about the results of the investigation or sought their advice about whether Fleck's actions amounted to "advocacy." *Id.* at 24–25.

For its part, Defendant does not contest the factual bases for Hartman's opinions—that is, it does not contest that the identified evidence was, in fact, omitted from OIG's report. *See* Dkt. 49 at 28. Rather, it insists that the omissions were reasonable, immaterial, and would not alter the ultimate factual findings and conclusions in the report. *Id.*

[15] Upon consideration of the Hartman report and the evidence in the record, the Court concludes that Defendant is entitled to summary judgment with respect to two of the potential violations that Hartman identifies. First, although it is true that Defendant has not updated the public version of its report to replace VA Deputy Secretary Bowman's concurrence letter to reflect his disagreement with all of the report's conclusions except the finding on sharing sensitive information, that omission is not cognizable under Section 552a(e)(6). To be sure, the absence of the VA Deputy Secretary's second letter renders OIG's report highly misleading, since it suggests, inaccurately, that VA management still concurs in full with the report's findings. The problem for Fleck, however, is that Section 552a(e)(6) obligates an agency to undertake reasonable efforts to ensure that a record is complete and accurate only "prior to disseminat[ion]," and, here, the VA Deputy Secretary rescinded his concurrence after the publication of the report. Fleck does not point the Court to any authority establishing that Section 552a(e)(6) imposed an obligation on Defendant to update the report. Accordingly, the Court will grant summary judgment in Defendant's favor with respect to that claim.

[16, 17] The Court also concludes that there is no genuine dispute of material fact that Defendant undertook "reasonable efforts" to ensure the accuracy of the report's conclusion that Fleck and Wiercinski made false statements regarding the timing of her offer.[4] "It is well-established that, 'generally speaking, the Privacy Act allows for correction of facts but not correction of opinions or judgments.' " *Mueller v. Winter*, 485 F.3d 1191, 1197 (D.C. Cir. 2007) (quoting *McCready v. Nicholson*, 465 F.3d 1, 19 (D.C. Cir. 2006)). Thus, in order to be actionable, "a subjective judgment" must be " 'based on a demonstrably false' factual premise." *Mueller*, 485 F.3d at 1197 (quoting *White v. Off. of Pers. Mgmt.*, 787 F.2d 660, 662 (D.C. Cir. 1986)). Although Hartman contends that the report "does not contain sufficient evidence" to support its conclusion that Fleck and Wiercinski gave false statements, Dkt. 53-3 at 23, the undisputed facts in the record establish otherwise. Specifically, the report details how the investigators inter-

4. This does not constitute a finding that the conclusion was (or was not) correct, but only that the agency's failure to undertake further efforts to ensure the conclusion's accuracy does not amount to a violation of the Privacy Act. *See* 5 U.S.C. § 552a(e)(6).

viewed Gore, who did not recall the timing of his communications with Wiercinski but that he would not have made a call until after he received a recommendation from the hiring panel. Dkt. 49-3 at 18–19 (OIG report); *see also* Dkt. 58-4 at 2–3 (Gore Tr. at 63–65, 67–68). The report then explains that OIG analyzed Gore's, Wiercinski's, and Fleck's telephone records, which revealed no calls from Gore to Wiercinski until after October 4, 2016. Dkt. 49-3 at 19 (OIG report). This finding was also consistent with the email record, which indicated that Gore did not notify Wiercinski that she had been received the position until an hour after he received the Best Qualified Panel's recommendation. *Id.* at 33. Fleck faults OIG for "conduct[ing] no additional investigation into the 18 calls" to or from "unavailable" numbers on Wiercinski's phone during that period, Dkt. 53 at 10, but he does not identify any additional steps that Defendant could have taken to identify these numbers, nor does he offer evidence to suggest, in the event that Gore called from a different VA phone, that such a call would appear as "unavailable" when calls from Gore's VA office phone were identifiable, Dkt. 58 at 13. In light of this undisputed evidence, the Court concludes that no reasonable jury could find that Defendant failed to "make reasonable efforts" to investigate Fleck's and Wiercinski's claim that Gore had informally offered the position in September.

[18] With respect to the remaining omissions and inaccuracies Hartman identifies, however, the Court concludes that a genuine dispute of material fact exists as to whether OIG violated Section 552a(e)(6). To the extent that Defendant asserts that these omissions were reasonable, Hartman disagrees, and his expert report cites to specific provisions of the professional and internal standards governing OIG investigations that each omission ostensibly violated. Dkt. 53-3 at 12–25. That disagreement is sufficient to create a material fact dispute as to whether Defendant's efforts to assure the report's completeness and accuracy were reasonable.

[19] As discussed, Defendant also argues that the omitted evidence was immaterial or would not have altered the report's conclusions, but in doing so it misapprehends the standard for a violation under Section 552a(e)(6). Section 552a(e)(6) requires an agency to assure that a record is "accurate" and "complete." Even if additional evidence would not alter a report's bottom line, it might nevertheless provide important context that bears on the subject's level of culpability and cast the report's conclusions in a different light. That is precisely what Fleck says happened here. Thus, viewed in the light most favorable to Fleck, the Court concludes that there is sufficient evidence in the record from which to conclude that the report was incomplete or inaccurate.

C. Intent or Willfulness

Defendant further contends that, even if Fleck can establish a violation of the Privacy Act, the Court should nevertheless grant summary judgment in Defendant's favor because Fleck has not adduced any evidence that it violated Section 552a(e)(6) intentionally or willfully. The Court is unpersuaded.

[20, 21] As Defendant correctly observes, a plaintiff cannot recover damages under the Privacy Act unless he shows that the agency "acted in a manner which was intentional or willful." 5 U.S.C. § 552a(g)(4). The intentional-or-willful standard "does not require the [defendant] to set out purposely to violate the [Privacy] Act." *Tijerina v. Walters*, 821 F.2d 789, 799 (D.C. Cir. 1987). But the plaintiff must prove that the agency's actions were (1)

"so patently egregious and unlawful that anyone undertaking the conduct should have known it unlawful," (2) "somewhat greater than gross negligence," (3) "committed without grounds for believing [them] to be lawful," or (4) "[in] flagrant[ ] disregard [of] others' rights under the Act." *Maydak v. United States*, 630 F.3d 166, 180 (D.C. Cir. 2010) (emphasis and quotation marks omitted). For present purposes, so long "as there is . . . a genuine issue of material fact as to whether [the defendant] acted with something greater than gross negligence . . ., the issue cannot be disposed of on summary judgment." *Tijerina*, 821 F.2d at 799.

[22] At this stage, Fleck has adduced sufficient evidence of intent or willfulness to survive a motion for summary judgment. Fleck's theory is that Defendant pursued its investigation only with an eye toward substantiating the allegations against him rather than providing a complete account of his culpability. *See* Dkt. 53 at 28. This theory finds some support in Defendant's failure to interview Buonocore, even after Fleck informed OIG that Buonocore would have exculpatory information concerning Fleck's role in the hiring of his wife, and in OIG's failure to offer a satisfactory explanation for why it did not do so. Defendant attempts to defend this omission by explaining that Buonocore had retired by the time of the investigation (which meant that OIG could not compel his testimony), *see* Dkt. 58-1 at 43 (Def. Resp. to Pl. SMF ¶ 116), but Defendant offers no contemporaneous evidence to explain why OIG investigators did not ask him to testify voluntarily.

Similarly, Defendant does not satisfactorily explain why it excluded Diliberto's testimony from the report, even though Diliberto's testimony suggests that Fleck's role in the creation of the e-discovery position and the hiring process was less significant than the report made it out to be. Defendant defends its actions by explaining that the report was only focused on the narrow question of "advocacy" and the testimony of Diliberto and others was irrelevant to that specific question. Dkt. 49 at 33. What that argument misses, however, is that Section 552a(e)(6) required Defendant to ensure not only that the information in the report was relevant but also that it was *complete*. To appreciate the importance of completeness in operation, one need look no further than VA Deputy Secretary Bowman's decision to retract his concurrence, after reviewing Buonocore's and Diliberto's excluded testimony.

Finally, Fleck has also adduced direct evidence that arguably casts doubt on the objectivity of OIG's approach. Specifically, he points to an email sent by an OIG employee, who, upon realizing that the report at one point erroneously used the word "indict" instead of "indicate," joked that the error was a "Freudian" slip, thereby suggesting that OIG had pursued its investigation with an indictment as a goal. Dkt. 58-1 at 29 (Def. Resp. to Pl. SMF ¶ 81).

Put together, the Court concludes that this evidence creates a genuine issue of material fact as to whether Defendant acted "with something greater than gross negligence" with respect to its obligation to assure the completeness of its report, and, thus, the Court declines to grant Defendant's motion for summary judgment on that ground.

D. Causation and Actual Damages

[23] That brings the Court to the final elements of a Privacy Act claim: that a violation of the Act proximately caused Fleck actual damages. *Dickson*, 828 F.2d at 37. "To make out a damages claim, the alleged adverse [effects] must result from the inaccuracy of the record[ ], not the

mere existence of the record[ ]." *Thompson v. Dep't of State*, 400 F. Supp. 2d 1, 19 (D.D.C. 2005).

Fleck identifies six "adverse effects" that he claims he suffered because of Defendant's public dissemination of the allegedly inaccurate and incomplete report.[5] Dkt. 56 at 31. First, he argues that the report caused his proposed demotion, and, although that demotion ultimately did not occur, Fleck says that it had a "quantifiable *adverse effect* on [him] because he had to pay thousands of dollars to counsel to challenge the proposed discipline." *Id.* Second, Fleck maintains that the report "caused [him] pecuniary harm when he was rejected for multiple private sector jobs after the publication of the report." *Id.* at 32. Third, he claims that the report caused him to be denied a promotion to OGC Deputy General Counsel in November 2017 because "it is possible that someone within OGC knew about the OIG's decision to substantiate the allegations before November 2017." *Id.* at 34. Fourth, Fleck asserts that the report caused him to be "rejected for a job with the Department of Defense in April 2018." *Id.* at 35. Fifth, he contends that the report caused "adverse effects on his health that then caused increased health care costs." *Id.* at 36. And sixth, he argues that he "suffered adverse effects from the [r]eport when VA employees used the [r]eport as a basis for other whistleblower allegations against him," thereby causing him to "incur[ ] legal fees to defend (successfully) against them." *Id.*

[24] Although causation is ordinarily a question of fact for the jury, summary judgment is appropriate when the plaintiff "fail[s] to proffer any evidence ... from which a reasonable jury could find the required causal link" between the agency's Privacy Act violation and actual damages the plaintiff has suffered. *Williams v. Johnson*, 701 F. Supp. 2d 1, 17 (D.D.C. 2010). Here, the Court concludes that—with one exception—Fleck has not adduced sufficient evidence to create a genuine dispute of material fact as to whether the inaccuracies or any incompleteness in the OIG report proximately caused the adverse effects he identifies, and, thus, the Court will grant Defendant's motion for summary judgment with respect to those claims.

[25] Fleck's claim that the report caused his rejection for multiple private sector jobs fails for two reasons: first, he has not adduced sufficient evidence to permit a reasonable jury to find that anyone at the companies to which he applied was aware of the report, and, second, he has not created a genuine dispute of material fact as to whether he would have been selected for any of the positions but for the inaccuracies in the report. With respect to the first point, Fleck proffers an expert report from Deb Cohen, an executive hiring professional, who opines that "[i]nternet searches of executive candidates are highly likely;" that "[n]egative information about candidates found in internet searches has a detrimental effect on the decision whether to interview or hire those candidates;" and that a "search of Mr. Fleck and Veterans Affairs" on popular search engines reveals the OIG report. Dkt. 53-5 at 19 (Cohen Rep.). As Defendant points out, however, Fleck did not receive an interview invitation for any of these positions, and Cohen does not offer an opinion as to *when* in the hiring process

5. Fleck refers to two of his theories for actual damages as "adverse determinations," in reference to the standard under Section 552a(g)(1)(C). However, because those adverse determinations could easily be characterized as "adverse effects," the Court will treat them as such for the purpose of assessing Fleck's claim under Section 552a(g)(1)(D).

such a search is likely to occur or whether employers are likely to conduct an internet search of candidates as part of deciding whom to interview. Dkt. 49-10 at 13–15 (Cohen Dep. at 131–32, 141). Fleck, moreover, has adduced no evidence from the companies to which he applied about their hiring processes or about Fleck's application. In any event, even if Fleck were able to raise an inference that one or more of the private-sector companies he applied to was aware of the OIG report, Fleck has proffered no evidence to suggest that he might have been selected for the positions but for the inaccuracies in the report. Fleck did not receive an interview for any of the positions, was never told why, and did not explore that question in discovery. Nor has Fleck offered any evidence that he would have been among the best qualified candidates for the position: he does not identify who was eventually selected for each position or produce evidence of those selectees' qualifications. Fleck asserts that he was "qualified" for the positions, Dkt. 53-1 at 28 (Pl. SMF ¶ 124), but notably does not argue that he was among the best qualified candidates.

[26] Fleck similarly fails to create a genuine dispute that the OIG report caused his non-selection for the Department of Defense position. Fleck argues that the timing of his rejection from the position, coming just a day after his interview and only a few days after the OIG report's publication, allows the reasonable inference that the report played a role in his non-selection. Undisputed evidence in the record, however, establishes otherwise. With its motion, Defendant includes a declaration from Paul Koffsky, one of the two officials involved in the hiring process for the Department of Defense position. Dkt. 49-4 (Koffsky Decl.). In his declaration, Koffsky explains that both he and the other hiring official "agreed" that the individual who was ultimately selected for the position was "the best qualified candidate;" details the reasons why they reached that conclusion; states that he "did not consider Mr. Fleck's qualifications [to be] comparable" to that individual's; and attests that he has "no recollection of being aware at the time that Mr. Fleck was the subject of an [OIG] investigation or that an OIG report had been issued regarding him, nor . . . of that being a topic" in conversations about Fleck's candidacy. Dkt. 49-4 at 1–2 (Koffsky Decl. ¶¶ 4–6). Because Fleck offers no evidence to rebut these statements—including undisputed evidence that Fleck was not the best qualified candidate—he cannot establish that the OIG report caused his non-selection, and therefore that claim fails.

[27] Fleck also does not proffer sufficient evidence to sustain his claim that a disclosure of the initial draft of the OIG report caused him to be denied a promotion to OGC Deputy General Counsel in November 2017. This claim fails for a simple reason: Fleck offers no evidence that Defendant had disclosed any of the findings or results of the draft OIG report to one of the decisionmakers by the time his non-selection decision was made. Fleck points to the fact that OIG's draft report was completed on November 17, 2017—the same day that General Counsel Byrne announced that Mitrano had been selected for the position—as evidence that Bryne and the members of the interview panel *might* have seen a copy of the draft report. Dkt. 53-1 at 29–30 (Pl. SMF ¶ 135–36). That assertion, however, is purely speculative and, moreover, is undermined by Fleck's own testimony that he was told on November 15 or 16 that he would not be selected for the position. Dkt. 49-9 at 43 (Fleck Dep. at 98).

Fleck also indicates that certain members of the interview panel knew or may

have known about the *existence* of the OIG *investigation* at the time of his interview—either because they had been interviewed by investigators or because they had learned about it in the regular course of their duties at OGC. Dkt. 56 at 35; Dkt. 49-7 at 3 (Hogan Aff. ¶ 9); Dkt. 56-1 at 29–30 (Pl. Sealed SMF ¶ 136). Mere knowledge of an ongoing investigation, however, is not a Privacy Act violation. Rather, Fleck must produce evidence that an inaccurate or incomplete *record*—that is, the draft OIG report—was disclosed to members of his hiring panel prior to November 17, 2017, and that the disclosure of that flawed record caused his non-selection for the Deputy General Counsel position. *Thompson*, 400 F. Supp. 2d at 19. On this score, Fleck falls short. Fleck also maintains that two hearsay statements that Bryne and Meghan Flanz made months after the non-selection decision suggest that they knew about the report's findings before the report was published. Dkt. 56 at 34–35. But those statements do not establish that Defendant disclosed a draft report, or even any of the report's findings, to Byrne or Flanz prematurely in November 2017. Fleck's assertion that Bryne and Flanz received a premature disclosure of the report is pure speculation. In any event, Defendant also produces unrebutted declarations by two of the members of the interview panel—Flanz and Michael Hogan—that detail why Mitrano was the best qualified candidate for the position and explain that Fleck was not considered one the top candidates for the position based purely on his responses to the interview questions and his prior job experience. Dkt. 49-6 at 2–3 (Flanz Decl. ¶¶ 6–9); Dkt. 49-7 at 2–3 (Hogan Decl. ¶¶ 6–9). Fleck does not proffer any evidence to the contrary, nor does he assert that he was a better-qualified candidate than Mitrano.[6]

[28] Fleck has also failed to proffer sufficient evidence to permit a reasonable jury to find a causal link between any inaccuracies in the OIG report and the legal fees he incurred to defend against whistleblower allegations that Fleck improperly hired three former colleagues from the Department of the Army into VA positions. In support of his theory of causation, Fleck explains that the whistleblower submitted a court filing in separate litigation she has with Fleck in which she allegedly cites the OIG report "as support for her claim that . . . Fleck had improperly hired these three individuals." Dkt. 56-1 at 31–32 (Pl. Sealed SMF ¶ 149). Fleck explains, however, that he has not filed a copy of that court filing in this case—even under seal—"out of an abundance of caution given the whistleblower complaint." *Id.* Unfortunately, Fleck's failure to provide any record evidence to support his theory means that, as things stand, there is no genuine dispute of material fact with respect to the OIG report's causal connection with the whistleblower complaint. The Court must therefore grant Defendant's motion for summary judgment with respect to this claim. If Fleck is able to submit evidence to the Court (even if under seal) that establishes causation in support of his whistleblower claim, however, he may promptly seek reconsideration on that ground.

[29] The Court will also grant summary judgment to Defendant with respect to Fleck's allegation that his medical condition worsened due to the OIG report for two reasons. First, Fleck does not explain how any of the deficiencies that he identifies in the report—as opposed to the OIG

6. Because the Court concludes that Fleck has not adduced sufficient facts to support his claim arising out of his November 2017 non-promotion, the Court need not consider whether that claim is timely. *See* Dkt. 49 at 50–53; Dkt. 53 at 46–50.

investigation and the release of the report more generally—caused any alleged deterioration in his health. Second, Fleck does not produce any expert medical opinion testimony with respect to causation. *See Daniels v. District of Columbia*, 15 F. Supp. 3d 62, 73 (D.D.C. 2014). Although Fleck offers testimony from his healthcare provider, Mary Elizabeth Alder, a nurse practitioner, Alder concedes that she is not an expert, and Fleck has not proffered her as one. Dkt. 72 at 3–4 (Alder Dep. at 14–15). Moreover, even if she were competent to offer a medical opinion as to causation, Alder admits that she would not be able to do so in this case because Fleck's medical records do not offer a pre-OIG report baseline that would allow for such an analysis. Dkt. 72 at 31–32 (Alder Dep. at 57, 62). Since the absence of any medical expert testimony would leave the trier of fact "to speculate as to [the] cause or causes" of the alleged deterioration of Fleck's health, *Halcomb v. Woods*, 610 F. Supp. 2d 77, 86 (D.D.C. 2009), the Court will grant Defendant's motion for summary judgment with respect to any adverse health effects Fleck may have suffered.

[30] That leaves Fleck's claim that deficiencies in the OIG report caused him to incur legal fees to defend against his proposed demotion. With respect to this claim, the Court concludes that a genuine dispute of material fact exists as to whether any deficiencies in the OIG report proximately caused Fleck actual damages, and thus the Court will deny Defendant's motion for summary judgment.

[31] Legal fees that a plaintiff incurs to protect against the effects of an agency's Privacy Act violations are cognizable damages under Section 552a(g)(4). *In re U.S. Off. of Personnel Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 62 (D.C. Cir. 2019). Defendant nevertheless maintains that the fees Fleck paid his lawyer to defend against his proposed demotion are not cognizable here for three reasons: First, Defendant claims that, because the Court has already held that a "proposed demotion" is not an actionable adverse determination, it should follow that any legal fees arising from the proposed demotion should not be actionable. Dkt. 49 at 44. Second, Defendant contends that the proposed demotion is not attributable to any deficiency in the OIG report because Mitrano—the proposing official—based her proposal on an independent review of the investigative file and on aspects of Fleck's conduct that are not in dispute. Dkt. 58 at 23–25. And, third, it argues that Mitrano's proposal was an independent decision by a third-party actor that breaks the chain of causation. Dkt. 58 at 25. None of these arguments is persuasive.

[32] First, Defendant misreads the Court's previous opinion in this case. There, the Court held only that a proposed demotion could not qualify as an *adverse determination* for the purposes of Section 552a(g)(1)(C). Dkt. 21 at 12–13. It did not conclude, however, that a proposed demotion or, for that matter, any efforts undertaken to challenge a proposed demotion could not qualify as adverse *effects* for the purposes of Section 552a(g)(1)(D), and Defendant has not pointed the Court to any support for such a rule. The Supreme Court, moreover, has interpreted Section 552a(g)(1)(D)'s reference to "adverse effect" as "a term of art identifying a potential plaintiff who satisfies the injury-in-fact and causation requirements of Article III standing, and who may consequently bring a civil action without suffering dismissal for want of standing to sue." *Doe v. Chao*, 540 U.S. 614, 624, 124 S.Ct. 1204, 157 L.Ed.2d 1122 (2004). Because the efforts Fleck undertook to respond to the proposed demotion—including paying and retaining coun-

sel—constitute a sufficient injury for the purposes of Article III standing, this argument fails, and, indeed, Defendant abandons it in its reply brief.

With respect to Defendant's second argument, the Court concludes that a genuine dispute of material fact exists as to whether the proposed demotion is traceable to any alleged deficiencies in OIG's report. Although Mitrano's letter proposing Fleck's demotion does not cite to any specific findings in the OIG report, a reasonable juror could infer that Mitrano reviewed the report in addition to the investigative file and that the findings in the report likely influenced her proposal. Fleck's theory, moreover, is that the report violated the Privacy Act because it did not cite to evidence that significantly lessened his culpability. Those omissions are significant because Defendant only sent VA officials copies of the evidence and interview transcripts that it cited in its report. Thus, even if Mitrano solely reviewed the investigative file and reached her own judgments, she did not receive Diliberto's interview transcript or any testimony from Buonocore, whom VA OIG did not interview. Nor is Defendant's argument that Mitrano would have proposed a demotion anyway availing. The fact that, after receiving Buonocore's and Diliberto's testimony, General Counsel Byrne declined to issue Mitrano's proposed demotion and that VA Deputy Secretary Bowman rescinded his concurrence at least creates a dispute of material fact as to whether Mitrano might not have proposed a demotion in the first place.

[33] Finally, VA OIG's argument that Mitrano's independent decision breaks the chain of causation misses the mark. Although independent action by a third party can sometimes negate the proximate causality of a defendant's actions, that is true only when the third party's action is unforeseeable to the defendant. *See Coombs v. Islamic Republic of Iran*, No. 19-3363, 2022 WL 715189, at *19 (D.D.C. March 10, 2022). Here, Mitrano's proposed demotion was certainly foreseeable to Defendant, if for no other reason than the fact that the OIG report itself recommends that the OGC management confer about the appropriate administrative action to take against Fleck. Dkt. 49-3 at 21.

In sum, because Fleck has adduced sufficient evidence to permit a reasonable trier of fact to conclude that a violation of Section 552a(e)(6) caused him to incur legal fees to challenge his proposed demotion, the Court will deny Defendant's motion for summary judgment with respect to that claim.

CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment, Dkt. 49, is hereby **GRANTED** in part and **DENIED** in part, and Plaintiff's motion to strike and for sanctions, Dkt. 52, is **DENIED**.

SO ORDERED.



UNITED STATES of America,

v.

Murali Yamazula VENKATA, Defendant.

Criminal Action No. 20-66 (RDM)

United States District Court, District of Columbia.

Signed 03/26/2022

Background: Defendant filed motion to dismiss counts in indictment charging him with aggravated identity theft.

PART I: ALL OF THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	**Date of Nomination**
Judge, United States Court of Appeals for Veterans Claims	**07/14/2026**

Current Legal Name			
First Name	**Middle Name**	**Last Name**	**Suffix**
Robert	**Reynaud**	**Fleck**	

Addresses					
Residential Address (do not include street address)			**Office Address** (include street address)		
[redacted]			**Street: 810 Vermont Avenue, NW**		
City: Easton	**State: PA**	**Zip: 18042**	**City: Washington**	**State: DC**	**Zip: 20420**

Other Names Used						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
Bob		**Fleck**			**06/1953** Est **x**	**Present** Est ☐

Birth Year and Place

Year of Birth (Do not include month and day)	Place of Birth
1953	Philadelphia, PA

Marital Status					
Check All That Describe Your Current Situation:					
Never Married	**Married**	**Separated**	**Annulled**	**Divorced**	**Widowed**
☐	x	☐	☐	x☐	☐

Spouse's Name (current spouse only)			
Spouse's First Name	**Spouse's Middle Name**	**Spouse's Last Name**	**Spouse's Suffix**
Kristina	Suzanne	Wiercinski	

Spouse's Other Names Used (current spouse only)						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
Kristina		Fleck			06/2006 Est x	Present Est ☐

Children's Names (if over 18)			
First Name	**Middle Name**	**Last Name**	**Suffix**
Robert	**Reynaud**	**Fleck**	**Jr.**
Joseph	**Robert**	**Fleck**	
Theresa	**Sylvia**	**Fleck**	
Kristina	**Suzanne Alicia**	**Fleck**	

2. Education

List all post-secondary schools attended.

Name of School	**Type of School** (vocational/technical/trade school, college/university/military college/ correspondence/distance/extension/online school)	**Date Began School** (month/year) (check box if estimate)	**Date Ended School** (month/year) (check box if estimate) (check "present" box if still in school)	**Degree**	**Date Awarded**
La Salle University	**College**	**09/1971** Est ☐	**05/1975** Est ☐ Present ☐	**B.S.**	**05/1975**
University of Baltimore	**Law School**	**08/1976** Est ☐	**12/1979** Est ☐ Present ☐	**J.D.**	**05/1980**
Temple University	**LLM (two courses)**	**09/1980** Est x	**12/1981** Est ☐ Present x	**None**	
Villanova University	**LLM (one course)**	**01/1982** Est x	**06/1982** Est ☐ Present x	**None**	

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
Other Federal Employment	Department of Veterans Affairs	Deputy General Counsel	Washington, DC	03/2025 Est ☐	Est ☐ Present X
Other Federal Employment	Department of Veterans Affairs	Chief Counsel Procurement Law Group	Washington, DC	05/2016 Est ☐	03/2025 Est ☐
Other Federal Employment	Army Materiel Command (AMC) Legal Center	Acting Chief Counsel	Aberdeen Proving Ground	06/2015 Est ☐	05/2016 Est ☐
Other Federal Employment	CECOM Life Cycle Management Command and AMC Legal Center-	Deputy Chief Counsel	Aberdeen Proving Ground	03/2010 Est ☐	06/2015 Est ☐
Other Federal Employment	Department of the Army, CECOM Life Cycle Management Command	Senior Litigation Counsel	Fort Monmouth, NJ	07/2006	03/2010
Non-Government Employment	Graduate Business School, Florida Institute of Technology	Adjunct Professor	New Jersey	08/2004	08/2011
Other Federal Employment	Department of the Army, AMC Headquarters	Associate Counsel	Alexandria, VA	05/2005	07/2006
Other Federal Employment	Program Executive Office for Ammo and	Attorney-Advisor	Picatinny Arsenal, NJ	05/2004	05/2005

	Ground Combat Systems				
Non-Government Employment	Self-employment as Robert R. Fleck, Attorney at Law	Owner	Langhorne, PA	10/1991	04/2004
Non-Government Employment	The Boeing Company	Senior Attorney	Philadelphia, PA	08/1986 Est ☐	09/1991
Non-Government Employment	RCA	Attorney	Camden, NJ	04/1985 Est ☐	08/1986 Est ☐
Other Federal Employment	Defense Logistics Agency	Attorney-Advisor	Philadelphia, PA	09/1983 Est ☐	04/1985 Est ☐
Non-Government Employment	Bowen & Fleck	Partner	Southampton, Pa	04/1981 Est ☐	09/1983 Est ☐
Other Federal Employment	Defense Contract Audit Agency, Philadelphia, PA	Senior Auditor	Philadelphia, PA,	08/1975 Est	04/1981 Est ☐

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
Bucks County Housing Development Corporation	Board Member	09/1989 Est x	09/1991 Est x Present ☐

4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Superior Performance Award (2016)
Army Meritorious Civilian Service Award (2013)
Certificate of Achievement (2011)
Army Materiel Command Attorney of the Year (2011)
Four Star Note of Appreciation (2011)

5. Memberships

List all memberships held in professional, social, business, fraternal, scholarly, civic, charitable, or other organizations in the last ten years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax-deductible donation of $1,000 or less, Parent-Teacher Associations, or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate)	Position(s) Held
Beach Haven Marlin and Tuna Club, Beach Haven, NJ	**09/2003 – present**	**Member**
Ned's Club, Washington, DC	**02/2026 – present**	**Member**

6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
Tax Collector, Langhorne Borough, PA	**Elected**	**1996**	**4 years**
Middletown Township Supervisor, Middletown Township, PA	**Candidate**	**1988**	
Long Beach Township Commissioner, Long Beach Township, NJ	**Candidate**	**2008**	

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
None.			

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution
None.		

7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles or blog posts published on the Internet.

Title	Publisher	Date(s) of Publication
None.		

8. Public Statements

(A) List any testimony, official statements or other communications, including those made on the Internet including on social media or other digital content sites, relating to matters of public policy that you have issued or provided or that others presented on your behalf to public bodies or officials.

None.

(B) List any speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the dates and places where such speeches or talks were given.

None.

(C) List all interviews you have given to newspapers, magazines or other publications, and radio or television stations (including the dates of such interviews).

Bankruptcy Law, WMMR Philadelphia Radio Interview, 1994 (est.).

Auto Accident Law, Bucks County, PA Radio Interview, 1996 (est.).

9. Agreements or Arrangements

□ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)
Not applicable.		

10. Lobbying

Have you ever registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No, I have never registered as a lobbyist.

11. Testifying Before the Congress

(A) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such Committee?

Yes.

(B) Do you agree to provide such information as is requested by such a committee in a timely and accurate manner?

Yes.

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

SUPPLEMENTAL QUESTIONNAIRE FOR NOMINEES
TO THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS

PUBLIC

1. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels, or conferences of which you are or have been a member, and provide the titles and dates of any offices which you have held in such groups.

   Bucks County Bar Association (1981 – 2003)
   Pennsylvania Bar Association (1985 – 2002)

2. **Bar and Court Admission**:

   a. Are you currently a member in good standing of the bar of a Federal court or of the highest court of a state?

      Yes.

   b. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

      Pennsylvania Supreme Court, December 9, 1980
      New Jersey Supreme Court, May 1987

      There have been no lapses in membership.

   c. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Provide the same information for administrative bodies that require special admission to practice.

      United States Court of Appeal for the Third Circuit (2000)
      United States District Court for the Eastern District of Pennsylvania (1980)
      United States District Court for the District of New Jersey (1987)
      United States Tax Court (1981)
      Pennsylvania Supreme Court (1980)
      New Jersey Supreme Court (1987)

      There have been no lapses in membership.

3. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Question 12 on the Committee's initial questionnaire, to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, or conferences.

Beach Haven Marlin and Tuna Club (2003 – present)

Haven Beach Club
Member (2003 – 2015)
President (2011 – 2014)

Mozart Lodge (1983 – 1990)

Ned's Club (2026 – present)

Sextant Lodge (2006 – 2008)

Spray Beach Yacht Club (2003 – 2014)

Veterans of Foreign Wars Men's Auxiliary Post 3729, Long Beach Island
Member (2004 – 2012)
President (2006 – 2009)

b. Indicate whether any of these organizations of which you are a member currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe what efforts, if any, you made to try to change the organization's discriminatory policies or practices.

To my knowledge, none of the organizations listed above discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

4. **Published Writings and Public Statements**:

a. If you have published any written materials (letters to the editor, articles, reports, memoranda, policy statements, friend of the court briefs, testimony or other official statements or communications) relating in whole or in part to matters of public policy or legal interpretation related to veterans issues, please supply those materials to the Committee.

None.

b. Supply transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions that related in whole or in part to veterans issues. If you do not have a copy of the speech or a transcript or recording of your remarks, provide the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

(Note: As to any materials requested in this question, please omit any confidential materials or materials protected by the attorney-client privilege.)

None.

5. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge and, if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have not served as a judicial law clerk.

ii. whether you practiced alone and, if so, the addresses and dates;

I practiced alone and operated the law office of Robert R. Fleck, Attorney at law during these time periods at the addresses listed below. During some of these years, I operated my law firm on a part-time basis while I had other full time employment.

1983 to 1991, 192 Colonial Drive, Langhorne, PA 19047
1991 to 1993, 198 Pine Street, Langhorne, PA 19047
1993 to 2004, 115 E. Maple Ave., Langhorne, PA 19047

iii. the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

1981 – 1983
Bowen & Fleck
1160 Street Road
Southampton, PA 18966
Partner

1983 – 1985
Defense Logistics Agency
800 Robbins Ave.
Philadelphia, PA 19111
Attorney Advisor

1985 – 1986
RCA
1 Market Street
Camden, NJ 08102
Attorney

1986 – 1991
The Boeing Corporation
Philadelphia, PA 19142
Senior Attorney

2004 – 2005
Department of the Army, Program Executive Office for Ammo and Ground Combat Systems,
Picatinny Arsenal, NJ
213 NJ 15, Wharton NJ 07885
Attorney Advisor

2005 – 2006
Department of the Army, AMC Headquarters
9301 Chapek Road
Fort Belvoir, Virginia 22060
Associate Counsel

2006 – 2010
Department of the Army, CECOM Life Cycle Management Command, Fort Monmouth
Oceanport, NJ 07703
Senior Litigation Counsel

2010 – 2015
CECOM Life Cycle Management,
6001 Combat Drive
Aberdeen Proving Ground, MD 21005
Deputy Chief Counsel

2015 – 2016
Army Materiel Command (AMC) Legal Center
6001 Combat Drive
Aberdeen Proving Ground, MD 21005

Acting Chief Counsel

2016 – 2025
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC, 20420
Chief Counsel Procurement Law Group

2025 – present
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC, 20420
Deputy General Counsel

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the ten most significant matters with which you were involved in that capacity.

I served as an Arbitrator for the Bucks County Court of Common Pleas approximately every 6 months from 1981 to 2003 for cases valued at less than $50,000. These hearings were not made on the record, and I do not recall the details.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years;

From 1980 to 2003, I had a general practice of law, usually civil cases representing individuals, municipalities, and corporations.

From 2004 to 2016, I served as a civilian attorney for United States Army at Picatinny Arsenal, Army Materiel Command Headquarters and Communication Electronics Command. I provided advice on procurements and served as the lead attorney for bid protests before GAO and advised on all matters as the lead attorney for Army Materiel Command on litigation in federal courts.

From 2016 to March 2025, I was the Department of Veterans Affairs Chief Procurement attorney. I was responsible for all department-wide procurements and procurement litigation.

From March 2025 to present, I serve as Deputy General Counsel. I represent the Secretary and officials of the Department of Veterans Affairs in litigation in federal and state courts. I coordinate with the Department of Justice in civil and criminal litigation involving VA

installations, programs, and activities. I supervise, through Senior Executives, all OGC legal offices. I advise and through attorneys represent the VA before the U.S. Court of Appeals for Veterans Claims in litigation significantly impacting the VA's national benefits programs.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized;

From 1980 to 1983, I represented individuals, partnerships and corporations in civil, tax, and personal injury matters.

From 1983 to 1985, I represented the Defense Logistics Agency before the Armed Services Board of Contract Appeals and Federal District Court for contract and fraud matters. Also, on a part time basis, I represented individuals, partnerships, and corporations in civil, tax, and personal injury matters.

From 1985 to 1991, I represented the RCA and The Boeing Company in all corporate matters. I also represented individuals, partnerships and corporations in civil, tax, and personal injury matters on a part time basis. From 1991 to 2003, I was full time in my private practice. I was the Solicitor for a large school district and special counsel for several school districts, and Solicitor for a municipality and special counsel for several municipalities. I also represented individuals, partnerships and corporations in civil, tax, domestic, zoning and personal injury matters.

From 2004 to 2006, I was the lead Army attorney in litigation and appeared before administrative hearings and courts approximately six times. As I continued my career in the Army, I appeared in court on a less-frequent basis but in major litigation.

From 2006 to 2011, I was the lead attorney for the Army Materiel Command in defending a Contract Disputes Act Claim against the Army for $2.5 billion. I was the AMC lead attorney and the presenter for a nine-month Alternative Dispute Resolution process that concluded with three weeks of presentations. I also supervise attorneys in litigation matters.

From 2016 to 2017, I was the lead Department of Veterans Affairs attorney defending a claim in the Court of Federal Claims for $2 billion.

Since 2017, I supervise several attorneys in litigation matters.

iii. any law practice or legal experience that involved veterans' law.

From 2016 to 2025, as Chief Counsel for Procurement Law Group, I was involved with veterans' law for benefits and veterans' medical benefit records modernization and Community Care benefits.

Since March 2025, my entire practice has focused on veterans' law.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

For the first two decades of my legal career as a general practitioner, I appeared in court at least four times per month. Beginning in 2004 to 2006, when I became an attorney for the Army, I was the lead attorney in litigation and appeared before administrative hearings and courts approximately six times. As I continued my career in the Army, I appeared in court on a less-frequent basis but in major litigation. Since 2011, I supervise attorneys in litigation matters.

i. Indicate the percentage of your practice in:
   1. federal courts; **45%**
   2. state courts of record; **40%**
   3. other courts; **5%**
   4. administrative agencies; **10%**

ii. Indicate the percentage of your practice in:
   1. civil proceedings: **99%**
   2. criminal proceedings: **1%**

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict, judgment or final decision as sole counsel approximately 20 cases, and I was chief counsel in approximately 10 of those cases.

e. Describe your practice, if any, before the Supreme Court of the United States. Supply any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court.

6. **Litigation**: Describe the ten most significant litigated matters that you personally handled, whether or not you were the attorney of record. Provide the citations, if the cases were reported, and the docket number and date if unreported. Provide a summary of the substance of each case. Identify the party or parties whom you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   a. the date of representation;
   b. the name of the court and the name of the judge or judges before whom the case was litigated; and
   c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Lower Southampton Township v. Margaret Dixon and Joseph Dixon*, 756 A.2d 147 (Pa. Cmwlth. 2000); The Court of Common Please Bucks County, No.97-3463-05-1 (Judge Ward Clark), Commonwealth Court No.1165 C.D.1999, (President Judge Doyle, Judge Friedman, and Senior Judge McCloskey) Dec. 22, 1999, Appellate Brief 1999 WL 33940818 (Pa. Cmwlth.) (Representation: June 1997 to July 2000.)

I represented Lower Southampton Township as the Township Solicitor in this bench trial in December 1998. As Township Solicitor, I was enforcing the issuance of a zoning violation citation against the defendants for warehousing vehicles in a residential zone. Witnesses were presented for the township and the defendant presented witnesses. I questioned on direct and cross examination. The trial court issued the decision in favor of the Township. Defendants appealed to the Commonwealth Court of Pennsylvania. I wrote the briefs and presented the argument. The Commonwealth Court sustained the lower Court's decision and held the Dixons waived their right to argue that the Township filing fees are unconstitutional and their right to litigate the underlying zoning violation due to their failure to raise those issues before the zoning hearing board.

Co-counsel (appellate):
Catherine Ann Porter
301 S. State Street
Newtown, PA 18940
(215) 968-8911

Opposing Counsel:
Joseph M. Adams
200 Highpoint Drive, Suite211A
Chalfont, PA 18914
(215) 996-9977

2. *Christopher Leckey and Kathleen Leckey v. Lower Southampton Township Zoning Hearing Board Appeal of Lower Southampton Township,* 864 A.2d 593 (Pa. Cmwlth. 2004); Commonwealth Court No. 2778 CD. 2003, President Judge Colins, Judge

McGinley, Judge Pellegrini, Judge Friedman, Judge Cohn Jubelirer, Judge Simpson, and Judge Leavitt. Appellate Brief 2003 WL 24048700 (Pa. Cmwlth.) (Representation: December 2002 to December 2004.)

I represented Lower Southampton Township as the Township Solicitor in On behalf of the Township, we appealed to the Commonwealth Court of Pennsylvania the decision of the Bucks County Court of Common Pleas striking conditions required by the Zoning Hearing Board when it granted a special exception to conduct a nursery use with an accessory landscape business. The Commonwealth Court adopted our position, reversing the Common Pleas Court and holding that the Zoning Board had discretion to impose reasonable conditions for the special exception. The conditions included limiting the hours of operation, limiting the number of employees, and complying with the noise ordinance to be compatible in a residential zone.

Co-counsel:
Kristina Wiercinski
27 South 3rd Street, Apt. 406
Easton, PA 18042
(267) 269-7210

Opposing Counsel:
Stephen P. Moyer and H. Peter Nelson
Grim, Biehn and Thatcher
104 S. 6th Street
P.O. Box 215
Perkasie, PA 18944
(215) 257-6811

3. *Outdoor Partnership v. Lower Southampton Township Zoning Hearing Board* No. 1481 CD 2003 Appellate Brief 2003 WL 24187287 (Pa. Cmwlth.); Appellate Reply Brief 2003 WL 24187288 (Pa. Cmwlth.); Commonwealth Court Decision 858 A.2d 699 (Table), 2004 WL 2332167, Reargument denied October 7, 2004. (Representation: April 2002 to August 2004.)

I represented Lower Southampton Township as the Township Solicitor, and I was the counsel of record. The Bucks County Court of Common Pleas affirmed the decision of the Lower Southampton Township Zoning Hearing Board granting variances from setback, size, height and use restrictions. The Commonwealth Court of Pennsylvania adopted my position that the decision of the Zoning Hearing Board was an error of law and abuse of discretion.

Opposing Counsel:
Douglas C. Maloney
Begley, Carlin and Mandio
680 Middletown, Blvd.

P.O. Box 308
Langhorne, PA 19047
(215) 750-0110

4. *Syms v. Lower Southampton Township*, Court of Common Pleas of Bucks County No. 96-006641, Jan. 16, 1997 (Judge Ward Clark.) (Representation: September 1996 to March 2000.)

I represented Lower Southampton Township as the Township Solicitor in a complaint in mandamus was filed by the township tax collector for commissions. I successfully argued and the court held that relief in mandamus may not be granted where the result would be contrary to public policy. In an action for mandamus, no counterclaim may be asserted pursuant to Pa. R.C.P. 1096. The Township may have counterclaims which could and should be permitted to be part of any action by the tax collector for commissions. Further, a mandamus action cannot be sustained where there are other appropriate or adequate remedies available. The Tax Collection Law at 72 P.S. Section 1511.35 et. seq. provides for the methods of compensation for tax collectors in townships of the second class.

Opposing Counsel:
James P. McEvilly, Jr.
1200 Bustleton Pike Suite 1-B
Feasterville, PA 19053
(215) 322-2544

5. *Neshaminy School District v. Karla B. individually and as parent and natural guardian of Blake B.*, 1997 WL 563421, September 3, 1997, No. Civ 96-3865, (Judge Newcomer, E.D. Pa.) (Representation: May 1996 to September 1997.)

As the Solicitor for Neshaminy School District, I represented the school district in an administrative hearing seeking the removal of a student. After several days of testimony, the hearing officer ruled in favor of the school district. An issue not decided by the hearing officer was filed with the United States District Court for the Eastern District of Pennsylvania. The Court held as the parent failed to satisfy her burden that the pursuit of administrative remedies would be futile or inadequate; waste of resources or inflict severe or irreparable harm on the litigant; or involved purely legal questions, she cannot raise the issue of compensatory education in this action because she failed to exhaust administrative remedies.

Co-counsel:
Jane Mashburn Williams
331 E. Butler Avenue
New Britain, PA 18901
(215) 348-1147

Opposing Counsel:

Theodore Q. Thompson
10 N. Main St.
Ambler, PA 19002
(215) 628-8480

6. *In the Matter of TPL, Inc.*, B-297136.10; B-297136.11, June 29, 2006.
(Representation: September 2005 to June 2006.)

I was the Lead Attorney for the United States Army Materiel Command before the Government Accountability Office (GAO.) The GAO held a conflict of interest did not exist when the past performance of an offeror is evaluated by an employee who also submitted a past performance evaluation. The protest was denied.

Counsel for GAO:
Louis A. Chiarella
George Washington University School of Law
2000 H Street, NW
Washington, DC 20052
(202) 624-2761

Christine S. Melody
Office of the General Counsel, GAO
441 G Street, NW
Washington, DC 20548
(202) 512-5400

Co-Counsel:
Tara C. Mack
Leslie A. Nepper
U.S. Army Sustainment Command
1 Rock Island Arsenal Building 390
Rock Island, IL 61299
(309) 782-5421

Opposing Counsel:
David P. Metzger
Kristen E. Littig
Michele Mintz
Holland and Knight
601 Massachusetts Ave., NW
Washington, DC 20001
(202) 942-5000

Michele Mintz Brown
Leidos Corporate Headquarters
1750 Presidents St.

Reston, VA 20190
(571) 526-6000

7. *In the Matter of Meggitt Safety Systems, Inc.*, B-297378; B-297378.2, June 12, 2006. (Representation: October 2005 to January 2006.)

I was the lead attorney for the United States Army Materiel Command before the Government Accountability Office (GAO). After a hearing, the protests were denied. The GAO found the Army's decision to award a sole source contract for a fire suppression system contract was correct. The protestor did not demonstrate the ability to produce the system.

Counsel for GAO:
Scott H. Riback
Retired – Contact Information Unknown

Co-Counsel:
Robert E. Vollmar II
Retired – Contact Information Unknown

Opposing Counsel:
Richard B. Oliver
Pillsbury
725 South Figueroa St.
Los Angeles, CA 90017
(213) 488-7102

8. *CliniComp International, Inc. v. United States*, United States Court of Federal Claims, No. 17-1115 C, Oct. 30, 2017. (Judge Griggsby) (Representation: April 2017 to October 2017.)

I was the Department of Veterans Affairs Chief Procurement supervising attorney directly involved with a pre-award bid protest in this matter. I directly advised the Department of Veterans Affairs Secretary in soliciting a sole source contract to Cerner Corporation ("Cerner") for the next generation electronic health records ("EHR") system for the United States Department of Veterans Affairs (the "VA"), pursuant to the public interest exception to the Competition in Contracting Act. The contract was estimated to $10 billion. The Court found the plaintiff lacked standing to protest the sole source award because it lacked experience providing the large dollar value of services required by the proposed contract at the large number of facilities to be covered by the contract and also lacked experience performing the comprehensive set of tasks to be required and, therefore, could not have competed for the award.

Opposing Counsel:
Richard Joe Rupert Raleigh, Jr.

Wilmer and Lee
100 Washington St. Suite 100
Huntsville, AL 35801
(256) 533-0202

9. *In the Matter of Washingtonian Coach Corporation*, B-413809, Dec. 28, 2016. (Representation: September 2016 to December 2016.)

I was co-counsel for the Department of Veterans Affairs before the Government Accountability Office (GAO). The protestor asserted that its proposal was properly and timely submitted and the agency erred in not evaluating and considering its proposal. The emails were sent to the agency from the protestor but were never received "at the Local Exchange level due to being dropped at the Trusted Internet Connections Gateways from the protestor exceeded the size limit which is allowed by Veterans Affairs Policy. The because of their size." The GAO determined it is the offeror's responsibility to deliver its proposal to the proper place at the proper time.

Counsel for GAO:
Katherine I. Riback
Office of the General Counsel, GAO
441 G Street, NW, Room 1103
Washington, DC 20548
(202) 512-5436

Co-Counsel:
Aleia Barlow
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
(202) 461-9154

Opposing Counsel:
Pro Se
Leslie R. Hardy, General Manager
Washington Coach Corporation
715 Bromley Street
Silver Spring, MD 20902
(771) 209-7834

10. *Robert Fleck v. Department of Veterans Affairs Office of the Inspector General* (U.S. District Court for the District of Columbia), Civil Action No. 18-1452. (Judge Randolph Moss) (Representation: April 2018 to January 2023.)

I was the Plaintiff in this case. I initiated the case after the Office of Inspector General (OIG) issued a report alleging I had committed a nepotism violation when

my wife was hired by the VA. The case proceeded through discovery after motions filed by the government were denied. Immediately before the trial was to begin, the parties filed a joint stipulation dismissing the action. Importantly, the Court concluded in a Memorandum Opinion, Case 1:18-cv-01452-RDM Document 74, Filed 03/31/22, Pages 34 to 38, that a genuine dispute of material fact exists as to whether OIG violated Section 552a(e)(6). The expert report I submitted was used to support the conclusion. The expert, Mr. Hartman, cited to several examples of material omissions which ostensibly violated provisions of the professional and internal standards governing OIG investigations:

OIG failed to interview a witness who first suggested my wife as a candidate, even though I told OIG investigators. This contradicted the OIG report's finding that I "actively and openly solicited" for my wife's employment. the OIG report omitted material and relevant evidence that I did not advocate for my wife while the Best Qualified Panel was reviewing candidates, including testimony from all three members of the Best Qualified Panel that they received no pressure to hire her and that she was selected because she was the most qualified candidate;

The OIG report omitted testimony from two attorneys that established the need for the e-discovery position had been discussed at VA OGC before my arrival at OGC;

The OIG report omitted testimony from others who did not remember me having involvement converting a general staff attorney position to an e-discovery position and recalled a different individual making the decision;

The report did not fully address potentially material exculpatory information regarding my involvement in the position description or vacancy announcement. The report omitted testimony from the attorney who hired my wife when he stated: "to suggest that [Fleck] created the [position description] and there was some way that he drafted it to steer it, um, that's, that's bogus. That's bogus."

The OIG report's conclusion that "[t]here is a direct connection between Mr. Fleck referring his wife to" the hiring attorney, and the hiring "being influenced by that referral" was misleading because the hiring attorney told OIG investigators that I had no influence over the hiring decision. In particular, the attorney stated during his interview: "I assure you, if Fleck had ever tried to influence me, and, and if he had—and, and I say this humbly, but I'm going to be honest with you. Bob Fleck does not have a bit of influence over me." He also told investigators: "if [she] wasn't the best qualified, she wasn't going to get selected" and "the review process, the recruitment process, came through my section. [Fleck] had no say in that."

The report omitted testimony that, because my wife would be a member of the Real Property Law Group and not the Procurement Law Group, she did not report to me, and I did not control her "assignments [or] feedback."

The court also concluded I adduced sufficient evidence of intent or willfulness to remove me to survive a motion for summary judgment. The court's support for this position is as follows:

OIG's failure to interview a witness, even after I informed OIG that he would have exculpatory information concerning the hiring of my wife, and in OIG's failure to offer a satisfactory explanation for why it did not interview this person. OIG attempted to defend this omission by explaining the witness had retired by the time of the investigation (which meant that OIG could not compel his testimony), but OIG offered no contemporaneous evidence to explain why OIG investigators did not ask him to testify voluntarily;

Similarly, OIG omitted testimony from a witness citing it was not relevant even though the testimony suggests that the e-discovery position had been discussed at VA OGC before my arrival at OGC and testimony from all three members of the Best Qualified Panel that they received no pressure to hire her and that she was selected because she was far and away the most qualified candidate;

The court stated, "To appreciate the importance of completeness in operation, one need look no further than VA Deputy Secretary Bowman's decision to retract his concurrence, after reviewing …excluded testimony."

Also, the Court stated I adduced direct evidence that arguably casts doubt on the objectivity of OIG's approach. The Court concluded "this evidence creates a genuine issue of material fact as to whether Defendant acted "with something greater than gross negligence" with respect to its obligation to assure the completeness of its report…"

8. **Judicial Opinions/Offices:**

   a. If you are or have ever been a judge, attach a statement providing (1) citations for the ten most significant opinions you have written, (2) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (3) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions were not officially reported, please provide a copy of the opinions.)

      I have not served as a judge.

   b. State (chronologically) any judicial office you have held and whether you were elected or appointed. Please provide a description of the jurisdiction of each such court.

      Not applicable.

9. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities.

(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

A. I was lead attorney for US Army CECOM defending claims filed in the amount of approximately $2.5 billion for a software modernization program. I prepared final contracting officer's decisions, motions, memorandums of law and supervised e-discovery of over 4TBs of data. I was the lead attorney in a nine-month alternative dispute resolution (ADR) process and the lead presenter for three weeks of presentations. A favorable settlement was achieved.

B. I was the lead attorney for the Department of Veterans Affairs defending claims filed in the amount of approximately $2 billion for dialysis services. I developed information for ADR demonstrating the claimed amounts were unreasonable. A favorable settlement was achieved.

C. I was lead attorney for the Department of Veterans Affairs in the Agency's filing of a claim against a contactor for overpayment of bills in the amount of approximately $800 million. This complex recovery process required initiating and directing litigation, followed by guiding an Alternative Dispute Resolution to a favorable outcome.

D. I lead the effective implementation, management, and strategic oversight of the Community Care Network (CCN) Contracts valued at over $80 billion. At the outset of the procurement process for these contracts, I successfully led VA's litigation team in overcoming four bid protests out of the five CCN contracts, achieving a successful outcome.

**E. I was the Department of Veterans Affairs attorney for achieving a favorable outcome for veterans to have an electronic medical record that will be fully interoperable with Department of War's records management system. Through the EHRM effort, veterans will experience seamless continuity of records from entry into service through military retirement. This $10 billion effort has been a priority for VA for at least 25 years, as it is crucial for modernizing VA's health record system, ensuring that veterans receive timely, efficient, and high-quality healthcare services. This effort also ensures that future backlogs of processing important health information are remedied. During the administration of the contract, I was instrumental in leading negotiations with the EHRM contractor to ensure stringent accountability standards will be included in the contract,
reflecting VA's commitment to maintaining high standards of service and performance.**

F. I have led various litigation efforts on behalf of the Department of Veterans Affairs at the Ninth Circuit and District Court in litigation brought by homeless Veterans seeking care and residency on VA's West Los Angeles Campus, which is presently the home for hundreds of homeless Veterans in need of care at VA's Greater Los Angeles Medical Center. My expertise ensured a positive outcome for the VA, aligning with the President's and VA Secretary's priorities of resolving Veteran homelessness. My efforts have been pivotal in securing the necessary land, facilities, and resources to help up to 6,000 homeless veterans regain self-sufficiency on the 300-acre campus dedicated to America's heroes.

G. I also led the efforts of the Department of Veterans Affairs to restore the Second Amendment rights of hundreds of thousands of Veterans who were improperly reported to the Federal Bureau of Investigation (FBI) by VA for decades, resulting in these Veterans being precluded from purchasing, possessing, or transferring guns. With my effective assistance, a final rule that will impact the 1968 Gun Control Act was recently drafted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to clarify the proper definition of the term "adjudication." Through this clarification, VA was able to restore Veterans' Second Amendment rights and end the reporting of Veterans to NICS.

H. For the Department of Veterans Affairs, I played a crucial role in resolving a Veterans Health Administration lease issue for a critical medical center relocation in Bakersfield, California, saving VA $6 million in excessive annual leasing fees. My achievements showcased my ability to address complex challenges efficiently and economically and secured the continuity of VA healthcare services in a rural sector of the state for thousands of Veterans.

I. I led the resolution of a benefits class action issue involving toxic exposure impacts on thousands of Vietnam-era Veterans that had been active for approximately 40 years. Ultimately, the case has resulted in a significant waste of taxpayer dollars—up to $1 million per year in plaintiffs' attorneys' fees. My successful resolution of this long-standing issue exemplified my expertise and commitment to responsible stewardship of public funds to ensure those funds are directed toward Veteran care.

J. I established a process for VA attorneys to file for guardianship proceedings on behalf of mentally incompetent Veterans receiving care in VA's acute care facilities but require longer-term medical treatment. This initiative demonstrated my foresight and compassion in addressing the needs of thousands of vulnerable Veterans, ensuring they receive the care and support they need.

10. **Lobbying Activities:** List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).
(Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have never served as a lobbyist.

11. **Teaching**: What, if any, courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide copies to the committee.

I have taught the following courses:

Financial Accounting Principles, Florida Institute of Technology (Fall semester, 2004; Spring semester, 2005; and Spring semester 2010.) The course introduced the financial environment, financial statements, the accounting cycle and the theoretical framework of accounting measurement, emphasizing mechanics, measurement theory and the economic environment.

Finance, Florida Institute of Technology, Spring semester 2010. I taught basic Finance Principles. Introduced financial concepts for capital budgeting, capital structure and working capital.

I do not have a syllabus for any of the classes.

12. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

13. **Principal Office of the U.S. Court of Appeals:** By statute, the principal office of the U.S. Court of Appeals for Veterans Claims is in the Washington, D.C., metropolitan area. If confirmed, would you maintain your permanent residence within commuting distance of the Court while in active service?

Yes, I currently have a studio apartment in the commuting area.

14. **Charitable or Volunteer Work:** Please describe any charitable or volunteer work, including pro bono work, you have performed, particularly any work involving military personnel, veterans, or their families.

I performed charitable work as President, Vice President and member of the Feasterville Lions Club, Feasterville, PA from 1981 to 1990.

I served as an unpaid Board member of the Bucks County Housing Development Corporation from approximately 1988 to 1991. The corporation provided and developed low-income housing in Bucks County, PA.

Nomination Material for

DAVID M. JONES

Prepared Statement of David M. Jones
Nominee to be a Judge of the United States Court of Appeals for Veterans Claims
September 23, 2026

Chairman Moran, Ranking Member Blumenthal, and distinguished Members of this Committee, thank you for the opportunity to speak with you today. I am honored that the President has nominated me to serve as a judge on the United States Court of Appeals for Veterans Claims. I am also humbled by the possibility of the great task before me – ensuring that our nation meets its sacred responsibility to our veterans and their families. These are the individuals that have taken an oath to support and defend our Constitutional Republic, many of whom have, as President Lincoln described them at the end of the Civil War, "borne the battle" on behalf of our country. I can think of no higher calling.

I have had the privilege of serving my country for the past 20 years in the United States Army as a judge advocate – both a soldier and a lawyer, in a variety of assignments in a variety of locations. But my service was not mine alone.

I've had the support of my amazing wife, April, who is with me here today. Her tireless support and love for our family never ceases to amaze me, and I've admired and appreciated her own service and sacrifice for our country as a public servant. I've had the love and support of our five children. The youngest three are with me today, as my oldest son is away at college, and my other son has just reported to his first duty station after graduating from Coast Guard basic training a few weeks ago. Regardless of what title I have held or will hold in my life, my family has given me the title I most cherish – that of husband and father. I am extremely blessed because of them and love them all more than anything in this world.

I've also had the privilege of amazing examples of selfless service to our country, starting with my dad, Senior Chief (Retired) William Jones Sr., who spent 30 years in the U.S. Navy and Coast Guard, and my mom, Joyce Jones, who faithfully supported his service while lovingly caring for a family of six children. They remain the greatest influences in my life. My three older brothers, who followed in our dad's footsteps and answered the noble call to serve their country, by enlisting in the Coast Guard, Army, and Marine Corps out of high school. My brother, Rob, the Marine, is here with me today.

These examples of service extend beyond those wearing the uniform – as my two sisters serve their communities as a teacher, married to a police officer, and a nurse, married to a firefighter.

My family's love for our country and service to it makes me immensely proud. Their examples have all contributed to who I am and have led me to where I am today sitting in front of you. After serving my country for two decades in uniform, I am honored to be considered for continued service on the Court of Appeals for Veterans Claims.

Thank you for your consideration, and I would be glad to answer any of your questions.

Pre-Hearing Questions for David Jones
Nominee to be a Judge of the
United States Court of Appeals for Veterans Claims
From Senator Jerry Moran
Chairman, Senate Committee on Veterans' Affairs

September 1, 2026

1. Please detail the professional and personal experiences that you believe prepared you to serve as a Judge of the United States Court of Appeals for Veterans Claims (CAVC).

   Response: I believe my two decades of military service have helped prepare me to be a judge on the Court. For the past 20 years, I have served in a variety of positions as a judge advocate in the U.S. Army, both on active duty and in the Army Reserve. I've served as a prosecutor, both in military and civilian courts, operational and administrative law attorney, ethics advisor, military magistrate, and legal assistance attorney. Each of these positions required me to quickly learn and be able to communicate complex areas of law in demanding environments. I've also had the privilege to teach some of these areas of law to members of our military community – from recruits and cadets just beginning their military service, to general officers and senior officials responsible for leading our Army.

   Additionally, I believe that my time as a civilian in public service has helped prepare me to be a judge on the Court. Since leaving active duty, my practice has primarily been advising on ethics and compliance matters, each time in a demanding position. An ethics practice often involves analyzing and communicating nuanced statutes, regulations, and policy. I have served in this capacity at the White House, National Security Council, President's Intelligence Advisory Board, Special Inspector General for Pandemic Recovery (SIGPR), and the Commodity Futures Trading Commission (CFTC).

   While I believe these roles have helped prepare me for this position, I acknowledge the immense responsibility that comes with serving on the Court. I approach this position humbly with an understanding that I have a lot to learn. But throughout my time in public service, I have approached each position, whatever it might have been, with dedication and fervor, while staying focused on the mission of serving our country. If confirmed, I pledge to continue to do this in order to fulfill my responsibility to our veterans.

2. What is the appropriate role of CAVC in making certain that the Department of Veterans Affairs (VA) provides veterans, caregivers, survivors, and other claimants the benefits and services Congress has authorized, while remaining an impartial appellate court rather than a policymaking body?

   Response: As an Article I court, the Court's role is statutorily defined by Congress. It is to have exclusive jurisdiction to review decisions by the Board of Veterans' Appeals, thereby ensuring that claimants receive the benefits they are lawfully entitled to under Title 38 of the U.S. Code. Judges on the Court are required by the Constitution to be impartial, just like all other federal judges. The only policymaking role for the Court is that expressly given to it by Congress, such as in 38 U.S.C. § 7264. Otherwise, a judge must clearly

understand and stay within the confines of his role – interpreting the laws and regulations created by the policy branches of government.

3. Please describe your understanding of the purpose, jurisdiction, statutory responsibilities, and organizational structure of CAVC, including the Court's place between the Board of Veterans' Appeals and the United States Court of Appeals for the Federal Circuit. If confirmed, how would you contribute to the effective administration of the Court?

Response: The Court has exclusive jurisdiction to review decisions by the Board of Veterans' Appeals, thereby ensuring that claimants receive the benefits they are lawfully entitled to under Title 38 of the U.S. Code. The statutory responsibilities of the Court are found in 38 U.S.C. § 7261(a), and require the Court to, as quickly as practicable, (1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary; (2) compel action of the Secretary unlawfully withheld or unreasonably delayed; (3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the Secretary, the Board of Veterans' Appeals, or the Chairman of the Board found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or (D) without observance of procedure required by law; and (4) in the case of a finding of material fact adverse to the claimant made in reaching a decision in a case before the Department with respect to benefits under laws administered by the Secretary, hold unlawful and set aside or reverse such finding if the finding is clearly erroneous.

The Court is composed of at least three and, currently, not more than nine judges, one of whom serves as the chief judge. The Court hears cases brought by claimants challenging a decision of the Board of Veterans' Appeals. Decisions by the Court may be appealed by any party to the case to the United States Court of Appeals for the Federal Circuit.

If confirmed, I would first engage with the other judges and staff in order to determine where I can immediately contribute to the Court. I would then work to build collaborative relationships with the other judges and staff, listening and learning from their own experiences at the Court. I would also work to quickly build a team of clerks and staff with veterans law experience. I believe these relationships – with the other judges, staff, and my own chambers – are essential in order for me to be effective as judge. While continuing to build these relationships, I would approach my share of the caseload with dedication and duty so that I can decide all assigned cases as quickly as practicable, as required by law.

4. What do you see as the role of this Committee, specifically, and congressional oversight, in general, with respect to CAVC?

Response: As the appropriate committee for the Court, the Committee has a very important role in overseeing the work and function of the Court. The Committee is responsible for providing advice and consent on nominations of judges to serve on the Court. The Committee also receives the Court's annual report, which provides a summary of the Court's workload. As an Article I court, the Committee, specifically, and Congress,

in general, have extensive oversight of the Court and its jurisdiction, organization, and practice, and can exercise that oversight through legislative changes it deems appropriate.

5. If the Secretary of Veterans Affairs, the White House, the Office of Management and Budget, the Office of Personnel Management, or any other official or private entity contacted you about a pending case, sought a commitment about how you would decide a case or category of cases, or issued a directive that you believed violated the law or threatened the Court's decisional independence, what would you do?

   Response: It is essential to the rule of law that judges maintain their independence and impartiality so they can freely and fairly apply the law. There are several statutes, such as 18 U.S.C. § 201 or 18 U.S.C. § 1503, that make certain attempts to influence federal judges a criminal offense. If I believe any laws were violated, I will refer the matter to law enforcement.

6. How has your background equipped you to serve in this role as a judge on the United States Court of Appeals for Veterans Claims?

   Response: I believe all judges must have integrity, intellect, and an appropriate judicial temperament to effectively serve. I have 20 years of faithful public service that indicates my integrity, intellect, and temperament. My career has allowed me to serve in a wide variety of positions – to include prosecutor, magistrate, ethics advisor, professor – but regardless of the specific position I held, I approached it the same – with hard work, dedication, and the highest standards of integrity.

   I also believe that being a military veteran with 20 years of honorable service, both on active duty and in the reserve, has provided me with a unique understanding and appreciation for many of the issues facing our veterans and military community. I have helped servicemembers and veterans navigate difficult legal issues, and my family and I have had to navigate some of the challenges resulting from military service ourselves. This personal insight and experience have given me a deep appreciation for veterans and the sacrifice that comes with service to our country.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

   Response: There are a number of places where judges may look for persuasive authority. In a case with no controlling precedent, a judge on the Court may look for Supreme Court, Court of Appeals for the Federal Circuit, and Court of Appeals for Veterans Claims cases that have analogous issues, even if not directly on point. A judge may also look at other federal courts that may have considered similar issues, and possibly state court decisions. A judge may also consider legislative history, legal treatises, or academic articles to shed light on a particular issue.

   As for principles and methods, a starting principle for any judge is understanding their role is to interpret the text of the law or regulation and apply it to the facts before them. This starts with a plain reading of the text and ensuring there is in fact no binding authority to

resolve the issue in dispute. If it truly is a case of first impression with no binding precedent, a judge must articulate their interpretation of the text and what specific authorities they relied on to resolve the issue in dispute, so their reasoning is clear to all parties and higher courts.

8. At any point during the process that led to your nomination, did you make any representation or commitment to anyone, including officials at the White House, VA, the Department of Justice, or any outside organization, as to how you would handle a particular case, legal issue, or category of claims if confirmed? Were you asked for your views on any pending or recently decided veterans law matter? If so, please explain fully.

Response: No.

9. How would you describe your judicial philosophy? When interpreting law and regulation, what roles should be played by statutory or regulatory text, structure, context, ordinary meaning, related provisions, precedent, history, statutory purpose, and legislative history?

Response: My judicial philosophy begins with understanding the limitations of the role of a judge. It is not a judge's role to interject their policy views into a statute or regulation as they think it should be. That is the role of the policy making branches of government. Rather, a judge must interpret a statute or regulation by closely examining the text, in context, to understand its original meaning. This exercise emphasizes the text, to include the ordinary meaning of words, structure, context, and potentially legislative history. I would rely on precedent, as a judge is bound to do, as it serves a vital stabilizing role in our legal system.

10. Judges must decide cases based on the law and the record rather than their preferred policy outcomes. How would you separate any policy views, prior advocacy positions, or views developed in government or private practice from your responsibilities as a Judge?

Response: Judges must understand their role in our system of government, and that is to interpret the law and apply it to cases before them in an impartial manner. If confirmed, I understand that this impartiality is a key principle of service as a judge, and any personal views on policy matters that I may have will not affect my service as a judge on the Court.

11. What qualities of judicial temperament do you believe are essential for service on CAVC?

Response: Judges must have integrity, intellect, and the appropriate judicial temperament to maintain the public's confidence in our legal system. I believe the proper judicial temperament starts by approaching one's responsibility with humility and open-mindedness, an understanding that judges don't know everything simply because of the position they hold. Rather, they must acknowledge that they don't know everything and thereby seek to understand the law and facts before them.

Judges must also treat everyone with courtesy and respect. While the position is one of importance in our legal system, a judge has no more value as an individual than the claimant, attorney, court staff, or anyone else. Everyone should be treated equally with respect, and a judge has a responsibility to lead by example and demonstrate this to others.

Judges also should not be quick-tempered or unnecessarily angry. Rather, judges should be patient and kind, understanding that many individuals they interact with may be anxious about the process and its outcome. Judges, by their temperament, should not add to this anxiety.

12. If confirmed, what steps would you take as an individual Judge and as a member of the Court to improve timeliness without sacrificing careful review, due process, or decision quality?

Response: If confirmed, I would move quickly to hire judicial clerks and staff with veterans law experience. I am also educating myself, like I have throughout my career when taking on demanding jobs, in an effort to be ready to make an immediate impact to lessen the strain on the Court's demanding docket. I am researching influential veterans law cases and current issues of importance to the practice of veterans law, the rules related to practice before the Court, and the organization and function of the Court. If confirmed, I would work hard and deliberately, so I can meet my statutory obligation to decide cases as quickly as practicable.

13. In Ingram v. Collins, 38 Vet. App. 130, CAVC held that, when the applicable diagnostic code and related rating provisions do not refer to medication, the Board must discount the ameliorative effects of medication when assigning a disability evaluation. On February 17, 2026, VA issued an interim final rule amending 38 C.F.R. 4.10 in response to Ingram. VA rescinded that rule ten days later, restored the prior regulatory text, and the Federal Circuit appeal was dismissed by agreement on March 30, 2026. Do you understand Ingram to remain binding CAVC precedent, and can you describe its holding?

Response: The Court in *Ingram* held that when applicable diagnostic codes and special musculoskeletal regulations do not reference medication, the Board must discount the effects of beneficial medication when assigning an evaluation. The panel decision in *Ingram* serves as binding precedent for the Court.

14. In Bufkin v. Collins, 604 U.S. 369, the Supreme Court held that the standard of review applicable to a challenge involving the benefit-of-the-doubt rule depends on whether the asserted error is legal or factual, and that VA's determination whether evidence is in approximate balance is predominantly factual and reviewed only for clear error. Is Bufkin binding precedent, and can you describe its holding?

Response: The Supreme Court's decision in *Bufkin* is binding precedent. As laid out in the question, the Court held that the VA's determination whether the evidence regarding a service-related disability claim is in approximate balance is predominantly a factual determination reviewed only for clear error.

15. The Court may consider petitions for extraordinary relief alleging that VA has unlawfully withheld or unreasonably delayed action. Please describe the legal standards governing mandamus, unreasonable delay claims, and enforcement of the Court's mandates. How would you preserve the extraordinary nature of mandamus while making certain that meaningful and effective relief are available when ordinary appellate review is inadequate?

Response: In *Martin v. O'Rourke*, 89 F.3d 1338 (Fed. Cir. 2018), the U.S. Court of Appeals for the Federal Circuit determined that the Court of Appeals for Veterans Claims has

authority under 38 U.S.C. § 7261(a)(2) and the All Writs Act, 28 U.S.C. § 1651(a), to review action by the VA and issue a writ of mandamus when it finds the VA has unlawfully withheld or unreasonably delayed action. In *Heller v. McDonough*, 24-3504 (Vet. App. Nov 21, 2024)(citing *Cheney v. U.S. Dist. Ct.*, 542 US 367 (2004)), the Court determined that before issuing a writ, the Court needs to make sure three conditions are met: (1) petitioner must show a lack of adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used to replace the appeals process; (2) a petitioner must show a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that issuing the writ is warranted.

In *Martin*, 890 F. 3d at 1344 (citing *Telecomms. Rsch. & Action Ctr. V. FCC (TRAC)*, 759 F. 2d 70, 79 (D.C. Cir. 1984)), the Court of Appeals for the Federal Circuit held that when considering unreasonable delay, the Court should consider the six "*TRAC* factors." They are: (1) the time agencies take to make decisions must be governed by a "rule of reason"; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for his rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need to "find any impropriety lurking behind the agency lassitude to hold that agency action is unreasonably delayed."

If confirmed, I would act on any petitions for a writ of mandamus as quickly as practicable, as required under 38 U.S.C. § 7267(a), and before issuing a writ, I would ensure that all requirements are met, as outlined in the cases identified above.

16. Please describe with particularity the process by which these questions were answered.

Response: In answering these questions, I researched relevant statutes, regulations, and caselaw. Specifically, I researched Titles 18, 28, and 38 of the U.S. Code; 38 C.F.R., Chapter I; the cases cited in the questions as well as *Martin v. O'Rourke*, 89 F.3d 1338 (Fed. Cir. 2018) and *Heller v. McDonough*, 24-3504 (Vet. App. Nov 21, 2024); the Court's Rules of Practice and Procedure and Fiscal Year 2025 Annual Report; and articles and interviews related to judicial philosophy and temperament. Based on this research, I personally prepared draft responses. After receiving limited feedback from the Office of Legal Policy, I finalized my responses and authorized them to be submitted to the Committee on my behalf.

17. Do these answers reflect your true and personal views?

Response: Yes, these answers reflect my true and personal views.

Pre-Hearing Questions for the Record
Nomination Hearing of David Jones
Judge for the U.S. Court of Appeals for Veterans Claims
From Ranking Member Richard Blumenthal

1) Describe your professional background and qualifications to serve as a Judge on the U.S. Court of Appeals for Veterans Claims (CAVC) and explain why you are seeking this position.

Response: For the past 20 years, I have had the privilege of serving in the military. This commitment to service has been a lifelong desire, instilled in me at a very young age by a family that loves and is deeply devoted to our country. As a boy growing up, I was awed by the service of my grandfather, my dad, and my three older brothers, all of whom enlisted in the military right out of high school. I admired their courage and commitment, and I witnessed firsthand the sacrifices they made, as well as the sacrifices made by those around them. That is why I too have dedicated my life to serving my country by serving those who have made similar sacrifices – our military and its veterans. If confirmed, I would have the opportunity to continue this service to our veterans and the veteran community.

I believe my two decades of service have prepared me for this responsibility. I have had the opportunity to serve in a variety of positions as a judge advocate in the U.S. Army, both on active duty and in the Army Reserve. I have served as a prosecutor, both in military and civilian courts, operational and administrative law attorney, ethics advisor, military magistrate, and legal assistance attorney. Each of these positions required me to quickly learn and be able to communicate complex areas of law in demanding environments. I've also had the privilege to teach some of these areas of law to members of our military community – from recruits and cadets just beginning their military service, to general officers and senior officials responsible for leading our Army.

Since leaving active duty, my practice has primarily been advising on ethics and compliance matters, each time in a demanding position. An ethics practice often involves analyzing and communicating nuanced statutes, regulations, and policy. I have served in this capacity at the White House, National Security Council, President's Intelligence Advisory Board, Special Inspector General for Pandemic Recovery (SIGPR), and the Commodity Futures Trading Commission (CFTC). I believe each role I have held in my two decades of public service has helped prepare me to serve on the Court. If confirmed, I would approach my role as a judge with the same commitment, enthusiasm, and sacrifice I have had throughout my time in public service.

2) How do you approach statutory interpretation, and what methodology do you use to determine congressional intent when statutory language is ambiguous?

Response: All statutory interpretation begins with a plain reading of the text. This requires reading statutory text in context and applying an ordinary meaning to the words Congress chose to use. This comes from the presumption that Congress knows how to write statutes to mean what it intends. If an ambiguity persists, the Court may apply canons of statutory construction as a tool to interpret the text, and could potentially consider legislative history to determine the intended meaning of the text.

3) What are your views on the relative roles of attorney/advocate representation versus pro se representation in veterans' claims?

Response: The Court decides the cases brought before it in an impartial manner, regardless of whether the appellant is self-represented or not. If represented, the Court must ensure that any attorney or non-attorney practitioner appearing before the Court meets the requirements of Rule 46 of the Court's Rules of Practice and Procedure. While appellants have every right to be self-represented before the Court, the Court provides a number of helpful resources to unrepresented parties. The

Court should ensure that in each case where an appellant is self-represented, they are made aware of these resources.

4) What do you consider a reasonable timeframe for the Court to issue a decision in a given case?

Response: A reasonable timeframe depends on the facts of each case. With that said, I understand that the Court's statutory mandate under 38 U.S.C. § 7267(a) is to decide cases as quickly as practicable. This requires judges to act purposefully, prioritizing expediency without sacrificing the quality given to each case before him.

5) If you believed a VA position reflected an incorrect interpretation of a statute — even though that position was consistent with long-standing agency practice — would you be willing to reverse it?

Response: Yes.

6) Would the potential cost or disruption of overturning an established rule or practice factor into how you would adjudicate a case?

Response: No. Judges must decide cases by applying the law to the facts of the case and must avoid basing their decisions on external motivations.

7) The claims process — from the initial application through an appeal to the Board of Veterans' Appeals — is designed to be non-adversarial and preferential to the claimant. That posture changes once a case reaches the CAVC, where review is de novo and more traditionally adversarial. What in your background has prepared you to navigate that shift? How would you approach reviewing cases de novo after they've moved through a system intentionally designed to favor the claimant?

Response: Judges must be impartial, not giving preferential treatment or showing bias towards either party. Judges on the Court do not have to navigate the shift that VA does – from being non-adversarial and preferential to the claimant to an adversarial process before the Court. Rather, impartiality mandates that neither party receives preference from the Court. Having served as a military prosecutor and at federal agencies where I was involved in the investigation and prosecution of crime, I am accustomed to the need for judges to remain impartial as well as the adversarial nature of litigation.

As for my approach to reviewing cases de novo, I understand that the VA claims process is designed to be veteran-friendly and non-adversarial. However, that design does not assume that the VA's decisions are correct when a case comes before the Court. Rather, the Court's role is to review BVA decisions under the appropriate scope of review – without deference to the BVA's legal conclusions, and for clear error of the BVA's findings of fact.

8) Since the earliest days of judicial review of veterans' claims, courts have recognized that Congress intended VA to "fully and sympathetically develop the veteran's claim to its optimum." *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). Yet the claims process has moved increasingly toward mandatory forms and decisions that are fully or nearly fully automated. How do you view VA's duty to run a sympathetic, claimant-friendly process in an era of automation and AI? What would you expect of a veteran — particularly an elderly veteran — navigating this process, and what would you expect of VA?

Response: I am unaware, with any degree of specificity, how increased automation and artificial intelligence currently affects the VA's non-adversarial and pro-claimant system, and how it will affect it going forward. Generally, I would hope that the purpose behind implementing new technology would benefit the veteran and retain the unique, pro-claimant character of the VA claims process. I

would also note that the decision to implement new technology at the VA is the proper purview of the policy making branches of government, as opposed to the Court.

9) For decades, the VA benefits system has struggled with inadequate medical evidence, a problem that has worsened since VA outsourced most compensation and pension exams to private contractors. Despite a CAVC remand rate that typically runs 80% or higher — driven in large part by inadequate exams — there has been little improvement. What role can the Court play in driving meaningful improvement in the quality of evidence VA produces?

Response: The Court's role is statutorily defined by Congress – to have exclusive jurisdiction to review decisions by the Board of Veterans' Appeals, thereby ensuring that claimants receive the benefits they are lawfully entitled to under Title 38 of the U.S. Code. In that regard, the Court plays a role in that the VA may react to its decisions by improving the quality of evidence it produces.

10) Veterans are increasingly turning to unaccredited companies that conceal their own involvement while pushing mass-produced, AI-generated claims submissions. VA has issued numerous cease-and-desist letters to such companies in recent years, largely ignored, in part because there are no meaningful penalties for this unauthorized practice. What role should the Court play in addressing unaccredited representation, particularly where the responsible parties avoid formally appearing on the record?

Response: The Court has a role in ensuring that any attorney or non-attorney practitioner appearing before the Court meets the requirements of Rule 46 of the Court's Rules of Practice and Procedure. Otherwise, the Court is limited in its ability to address unaccredited companies. Rather, this responsibility resides with the executive branch executing the laws passed by Congress. To the extent that the Court becomes aware of a violation of law, the matter should be referred to the appropriate law enforcement agency.

11) Under the Supreme Court's 1994 decision in *Brown v. Gardner*, veterans' benefits statutes have historically been interpreted liberally in favor of veterans. This "pro-veteran canon" has come under increasing criticism from strict textualists. Do you believe there remains an ongoing role for the pro-veteran canon in interpreting veterans' benefits statutes?

Response: There is an ongoing role for the pro-veteran canon as described in *Gardner* and reflected in subsequent cases. However, if confirmed, I will decide each case based on the facts of that case, and applying the pro-veteran canon depends entirely on the text being interpreted. It also depends on how the Court, the Court of Appeals for the Federal Circuit, and the Supreme Court apply *Gardner* going forward, and would also depend on legislative action, if any, codifying the *Gardner* presumption.

12) Since many cases of military sexual trauma go unreported during service, do you believe non-DOD evidence can be sufficient for veterans to corroborate an instance of Military Sexual Trauma for purposes of establishing eligibility for disability compensation benefits?

Response: The VA currently allows veterans, under 38 C.F.R. § 3.304(f), to provide non-DOD evidence of military sexual trauma (MST) to corroborate posttraumatic stress disorder (PTSD) claims. For non-PTSD disability compensation claims related to MST, veterans are limited to submitting service records as corroborating evidence of the MST event. This determination on what evidence to allow is a policy decision made by the VA under its statutory authority of 38 U.S.C. § 501(a), and not one for the Court to decide.

13) Section 1131 of Title 38, United States Code, grants basic disability compensation entitlement to a veteran who "was discharged or released under conditions other than dishonorable." VA's process for determining if a veteran's service is considered "under conditions other than dishonorable" has been

scrutinized by stakeholders and legal scholars. What are your thoughts on the eligibility of veterans with Other Than Honorable or Bad Conduct discharges for VA benefits?

Response: The statutory language in 38 U.S.C. § 1131, "under conditions other than dishonorable," has been subject to various definitions by the VA. Currently, the VA uses six statutory bars, enumerated in 38 U.S.C. § 5303 and 38 C.F.R. § 3.12(c), and four regulatory bars, enumerated in 38 C.F.R. § 3.12(d), to restrict former servicemembers access to VA benefits. Neither the statutory or regulatory bars preclude all former servicemembers who received an Other Than Honorable or Bad Conduct discharge from being eligible for VA benefits, but instead allows the VA to analyze the facts and circumstances of each former servicemember's case to determine eligibility.

14) Describe your roles and responsibilities and the types of ethics and compliance matters you worked on while employed at the Commodity Futures Trading Commission (CFTC).

Response: Executive branch ethics officials are responsible for implementing an agency's ethics program, as laid out in 5 C.F.R. Part 2638. This includes advising on the statutes, regulations, and agency policies that traditionally fall under the purview of an ethics practice, as defined by the Office of Government Ethics and agency practice. Specifically, this includes understanding and advising employees on the applicability of the Ethics in Government Act, 5 U.S. Code Chapter 131 Part IV, the financial conflict of interest statute at 18 U.S.C. § 208, statutes restricting outside representational services and compensation at 18 U.S.C. §§ 203 and 205, restrictions on post-government representational services at 18 U.S.C. § 207, restrictions on supplementation of salary at 18 U.S.C. § 209, financial disclosure reporting requirements at 5 C.F.R. § 2634, the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635, interpretations, exemptions, and waiver guidance for conflict of interests at 5 C.F.R. § 2640, the restrictions on political activities at 5 U.S. Code Chapter 73, Subpart F, and other areas of law and regulation.

Additionally, CFTC employees have ethical limitations imposed by the Commodity Exchange Act, 7 U.S. Code § 1, its implementing regulations at 17 C.F.R. Part 140, Subpart C, and a Supplemental Standards of Conduct at 5 C.F.R. Part 5101. These rules address prohibited financial interests, prohibited financial transactions, restrictions on outside employment, and restrictions on practice before the Commission. As an agency ethics official, I advise CFTC employees on all of these issues.

15) In your position at CFTC, did you work on any legal issues related to prediction market platforms? If so, please describe that work.

Response: Event contracts traded on prediction market platforms are typically structured as swaps, which are derivative contracts regulated by the CFTC. CFTC employees are prohibited by the Commodity Exchange Act and its implementing regulations from engaging in certain regulated transactions, which include swap transactions. The extent of my involvement in issues related to prediction market platforms was advising CFTC employees on these restrictions.

16) In your position at CFTC, did you work on any legal issues related to crypto currencies? If so, please describe that work.

Response: The CFTC regulates commodity derivative contracts under the Commodity Exchange Act. CFTC employees are prohibited by the Commodity Exchange Act and its implementing regulations from engaging in certain regulated transactions or owning financial interests of CFTC registered entities. To the extent certain cryptocurrencies are classified as commodities by the CFTC, I have advised employees about their ability to own the underlying cryptocurrencies or cryptocurrency derivatives, consistent with CFTC rules. I have also advised CFTC employees that are required to file financial disclosure reports on the reporting obligations for cryptocurrencies.

17) Describe your roles and responsibilities and the types of ethics and compliance matters you worked on while employed at the Office of White House Counsel from 2018-2021 and since January 2025.

Response: Executive branch ethics officials are responsible for implementing an agency's ethics program, as laid out in 5 C.F.R. Part 2638. This includes advising on the statutes, regulations, and agency policies that traditionally fall under the purview of an ethics practice, as defined by the Office of Government Ethics and agency practice. Specifically, this includes understanding and advising employees on the applicability of the Ethics in Government Act, 5 U.S. Code Chapter 131 Part IV, the financial conflict of interest statute at 18 U.S.C. § 208, statutes restricting outside representational services and compensation at 18 U.S.C. §§ 203 and 205, restrictions on post-government representational services at 18 U.S.C. § 207, restrictions on supplementation of salary at 18 U.S.C. § 209, financial disclosure reporting requirements at 5 C.F.R. § 2634, the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635, interpretations, exemptions, and waiver guidance for conflict of interests at 5 C.F.R. § 2640, the restrictions on political activities at 5 U.S. Code Chapter 73, Subpart F, and other areas of law. As a White House ethics official, I advise employees on all of these issues.

18) Do you believe President Trump and White House officials have followed long-standing legal norms and ethics? Why or why not?

Response: Executive branch ethics officials are responsible for implementing an agency's rules-based compliance program. This requires understanding the scope of rules, *i.e.*, the statutes, regulations, and agency policies, that traditionally fall under the purview of an ethics practice, as defined by the Office of Government Ethics and agency practice. From my experience, the President and White House officials that I have been responsible for advising on ethics matters have complied with this rules-based compliance regime. In the event I thought any laws were violated, I have referred the matter to law enforcement.

19) Do you believe the President, VA Secretary, or any other Administration officials should have influence over CAVC? Why or why not?

Response: Congress created the Court to be independent of the VA, and a key aspect of the Court's independence is that it is not improperly influenced by the President, VA Secretary, or other Administration officials in how it decides cases before it. A president and Administration officials may file briefing as parties before the Court or seek to exert influence by working with Congress on desired legislative changes to the Court's jurisdiction, organization, and practice.

20) Describe how your background in ethics and compliance matters will inform your work on CAVC, if confirmed.

Response: My time serving as an ethics official in various executive branch agencies will inform my work on the Court in two primary ways. First, the nature of practicing ethics requires one to be a subject matter expert in researching, interpreting, and articulating a broad range of laws and regulations. Ethics rules encompass more than the Standards of Ethical Conduct for Employees of the Executive Branch found at 5 C.F.R. Part 2635. It involves interpreting a variety of statutes, such as the criminal statutes at 18 U.S.C. §§ 201 – 209, as well as a variety of nuanced agency regulations, to include the Office of Government Ethics' regulations at 5 C.F.R. Chapter XVI and the General Services Administration's regulations at 41 C.F.R. Subtitle F. It also requires a deep understanding of any agency-specific ethics rules. I have served in this capacity at a number of agencies, advising and articulating hundreds of rules to thousands of federal employees. I believe these experiences will assist me with serving on the Court, which undoubtedly also requires a deep understanding of the laws, regulations, and relevant caselaw covering veterans claims.

The second way I believe my time serving as an ethics official will inform my work on the Court involves the purpose behind the work. That is, ethics officials serve to protect the integrity of their agency, ensuring that the public can trust the work of the executive branch. I believe this is not just a necessary practice but a noble calling. Likewise, the work of the Court is a noble calling – making sure that veterans receive the benefits they are lawfully entitled to, and, in a way, the honor they rightfully deserve from our nation. If confirmed, I pledge to approach my service on the Court in the same way I have approached my service as an ethics counsel – with dedication, fervor, and an understanding and appreciation of the noble mission that the calling requires.

Questions for the Record
Nomination Hearing of David Jones for
Judge for the U.S. Court of Appeals for Veterans Claims
From Ranking Member Richard Blumenthal

1. What is your current political party affiliation?

   Response: I do not affiliate with any political party.

2. Did anyone advise you to change your party affiliation prior to your nomination or during the nomination process?

   Response: No.

3. Were you required to sign a Non-Disclosure Agreement during the nomination process?

   Response: No.

4. You have said your role at the Commodity Futures Trading Commission (CFTC) related to prediction market platforms and cryptocurrencies was to advise CFTC employees on ethics matters like ownership restrictions and financial disclosure obligations.

   a. As an ethics attorney, do you believe federal employees should be prohibited from using prediction market platforms? What about those who have a role in regulating prediction markets or have access to privileged information that can be monetized through these services?

   Response: My role as an ethics attorney is to advise on whether a course of action complies with the ethics rules given to us by Congress and the Office of Government Ethics. My legal advice is not influenced by my personal opinions on matters of policy, such as whether federal employees should be allowed to engage in certain conduct. However, I note that the CFTC has taken the position that certain event contracts traded on prediction market platforms are swaps, and therefore the CFTC has exclusive jurisdiction under the Commodity Exchange Act to regulate these transactions. This includes a strict prohibition on all CFTC employees from engaging in any swap transactions, regardless of whether the CFTC employee is personally involved in the regulation of the prediction market or has access to privileged information. Beyond that, it would be inappropriate for me to opine on what policies the CFTC or Congress should impose regarding prediction markets.

   b. Do you believe President Trump and White House officials have complied with federal ethics laws and norms related to cryptocurrency and prediction market platforms?

   Response: During my time detailed to the White House, it has been my experience that the President has complied with the ethics rules given to us by Congress and the Office of Government Ethics, to include those related to cryptocurrency and prediction market platforms. Likewise, White House officials that I advised on ethics matters have also complied with ethics rules related to cryptocurrency and prediction market platforms, with very limited exception. If I believed a White House official had not complied with an ethics rule, whether it was related to cryptocurrency, prediction markets, or any other financial interest, the matter would have been referred to the appropriate authority.

PART I: ALL OF THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	**Date of Nomination**
Judge, United States Court of Appeals for Veterans Claims	**07/14/2026**

Current Legal Name			
First Name	**Middle Name**	**Last Name**	**Suffix**
David	**Matthew**	**Jones**	

Addresses					
Residential Address (do not include street address)			**Office Address** (include street address)		
[redacted]			**Street: 1650 17th St NW**		
City: Warrenton	**State: VA**	**Zip: 20187**	**City: Washington**	**State: DC**	**Zip: 20006**

Other Names Used						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
None.					**Est** ☐	**Est** ☐

Birth Year and Place	
Year of Birth (Do not include month and day)	**Place of Birth**
1980	**Baltimore, Maryland**

Marital Status					
Check All That Describe Your Current Situation:					
Never Married	**Married**	**Separated**	**Annulled**	**Divorced**	**Widowed**
☐	X	☐	☐	X	☐

Spouse's Name (current spouse only)			
Spouse's First Name	**Spouse's Middle Name**	**Spouse's Last Name**	**Spouse's Suffix**
April	**McAnelly**	**Jones**	

Spouse's Other Names Used (current spouse only)						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
April	**McAnelly**	**Christian**			**07/2001** Est ☐	**06/2016** Est ☐
April	**Joy**	**McAnelly**		**X**	**03/1978** Est ☐	**07/2001** Est ☐

Children's Names (if over 18)			
First Name	**Middle Name**	**Last Name**	**Suffix**
Jackson	David	Jones	
Elijah	John	Christian	

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college/ correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Pensacola Christian College	College	08/1998 Est ☐	05/2002 Est ☐ Present ☐	BA	May 2002
Widener University School of Law	Law School	08/2002 Est ☐	05/2005 Est ☐ Present ☐	JD	May 2005
The Judge Advocate General's Legal Center and School	Military School	08/2015 Est ☐	05/2016 Est ☐ Present ☐	LLM	May 2016

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other federal employment, State Government (Non-federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	**Name of Your Employer/ Assigned Duty Station**	**Most Recent Position Title/Rank**	**Location** (City and State only)	**Date Employment Began** (month/year) (check box if estimate)	**Date Employment Ended** (month/year) (check box if estimate) (check "present" box if still employed)
Other Federal Employment	**Commodity Futures Trading Commission (with detail to the White House Office from 01/2025 – present)**	**Assistant General Counsel, Ethics/CT-14**	**Washington, DC**	**05/2022** Est ☐	Est ☐ Present X
U.S. Army Reserve Military Duty	**United States Military Academy, Department of Law**	**Assistant Professor, Lieutenant Colonel, U.S. Army JAG Corps**	**West Point, NY**	**03/2021** Est ☐	Est ☐ Present X
Other Federal Employment	**United States Department of the Treasury, Special Inspector General for Pandemic Recovery**	**Special Counsel and Ethics Official**	**Alexandria, VA**	**02/2021** Est ☐	**05/2022** Est ☐
Other Federal Employment	**Executive Office of the President, The White House, Office of White House Counsel**	**Special Assistant to the President and Senior Associate Counsel**	**Washington, DC**	**12/2018** Est ☐	**01/2021** Est ☐
U.S. Army Reserve Military Duty	**151st Legal Operations Detachment**	**Team Chief, Major, U.S. Army JAG Corps**	**Alexandria, VA**	**12/2018** Est ☐	**02/2021** Est ☐
Other Federal Employment	**Executive Office of the President, Office of**	**Attorney Advisor**	**Washington, DC**	**10/2018** Est ☐	**12/2018** Est ☐

	Administration, Office of General Counsel				
U.S. Army Active Military Duty	The Judge Advocate General's Legal Center and School, Administrative and Civil Law Department	Professor	Charlottesville, VA	06/2016 Est ☐	09/2018 Est ☐
U.S. Army Active Military Duty	The Judge Advocate General's Legal Center and School	Student, 64th Graduate Course	Charlottesville, VA	08/2015 Est ☐	05/2016 Est ☐
U.S. Army Active Military Duty	United States Army Communication s-Electronics Command (CECOM), Office of the Staff Judge Advocate	Chief of Military Justice and Special Assistant U.S. Attorney; Chief of Administrative and Civil Law	Aberdeen Proving Ground, MD	06/2013 Est ☐	06/2015 Est ☐
U.S. Army Active Military Duty	United States Military Entrance Processing Command, Office of the Staff Judge Advocate	Trial Counsel and Administrative Law Attorney	Naval Station Great Lakes, IL	06/2011 Est ☐	05/2013 Est ☐
U.S. Army Active Military Duty	Combined Joint Task Force -- 101, Office of the Staff Judge Advocate	Operational Law Attorney; Chief of Legal Assistance and Foreign Claims Attorney; Chief of Administrative Law	Bagram, Afghanistan	05/2010 Est ☐	05/2011 Est ☐
U.S. Army Active Military Duty	101st Airborne Division (Air Assault) and Fort Campbell	Chief of Claims	Fort Campbell, KY	06/2009 Est ☐	04/2010 Est ☐

U.S. Army Active Military Duty	**United States Army Training Center and Fort Jackson**	**Trial Counsel and Special Assistant U.S. Attorney; Legal Assistance and Claims Attorney**	**Fort Jackson, SC**	**06/2007** Est ☐	**05/2009** Est ☐
U.S. Army Active Military Duty	**The Judge Advocate General's Legal Center and School**	**Student, 169th Office Basic Course**	**Charlottesville, VA**	**01/2006** Est ☐	**05/2006** Est ☐
State Government Employment	**State of Maryland, Circuit Court for Cecil County**	**Law Clerk**	**Elkton, MD**	**09/2004** Est X	**12/2005** Est X
Non-Government Employment	**Precision Builders Inc**	**Laborer**	**Newark, DE**	**05/2000 (inter-mittent summer work)** Est X	**08/2004** Est X
Non-Government Employment	**Buttonwood Beach R.V. Resort**	**Landscaper/Laborer**	**Earleville, MD**	**05/2001 (inter-mittent summer work)** Est X	**08/2002** Est X
Non-Government Employment	**Pensacola Christian College (work study program)**	**Dishwasher/Usher/Residence Floor Leader**	**Pensacola, FL**	**08/1998** Est X	**05/2002** Est X
Non-Government Employment	**Kentucky Blue Landscaping**	**Landscaper**	**Elkton, MD**	**05/1999** Est X	**08/1999** Est X
Non-Government Employment	**Hard Times Fitness**	**Employee**	**Elkton, MD**	**09/1996** Est X	**08/1998** Est X

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)

None.		Est ☐	Est ☐ Present ☐

4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Military Awards:

Army Reservice Component Achievement Medal (2024, 2021)
Humanitarian Service Medal (2020)
Meritorious Service Medal (2021, 2018, 2015, 2011)
Army Commendation Medal (2020, 2009)
Army Achievement Medal (2014, 2007)
Defense Meritorious Service Medal (2013)
Bronze Star Medal (2011)
Afghanistan Campaign Medal (2011)
Army Overseas Service Ribbon (2011)
Non-Article 5 NATO Medal (2011)
Joint Meritorious Unit Award (2011)
Joint Service Achievement Medal (2010)
National Defense Service Medal (2006)
Global War on Terrorism Service Medal (2006)
Army Service Ribbon (2006)

Academic Awards:

Widener University School of Law Scholarship (2002)

5. Memberships

List all memberships held in professional, social, business, fraternal, scholarly, civic, charitable, or other organizations in the last ten years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax-deductible donation of $1,000 or less, Parent-Teacher Associations, or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate)	Position(s) Held
American Legion, Post 247	2024 - present	Member
Veterans of Foreign Wars, Post 9835	2024 - present	Member

6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
I have never been a candidate for or been elected or appointed to a political office.			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
None.			

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution
None.		

7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles or blog posts published on the Internet.

Title	Publisher	Date(s) of Publication
To Buy or Not to Buy? So Many Questions: How Judge Advocates Can Find Purpose to Spend Appropriated Funds?	**The Army Lawyer**	**January 2017**
Operational Law Handbook, 17th Edition (contributing author)	**International and Operational Law Department, The Judge Advocate General's Legal Center and School**	**2017**
Be Cautious with Quick Fixes for Bad Credit	**The Fort Jackson Leader**	**December 20, 2007**
Have You Read Your Life Insurance Policy Lately	**The Fort Jackson Leader**	**June 7, 2007**
Cancelling Private Mortgage Insurance	**The Fort Jackson Leader**	**May 24, 2007**
Telemarketing Scams Target Your Wallet	**The Fort Jackson Leader**	**May 10, 2007**
Can Service Members End a Lease Early	**The Fort Jackson Leader**	**April 26, 2007**
Buying a Used Car: Don't be Driven by Dealer	**The Fort Jackson Leader**	**April 12, 2007**
Be Cautious of Online Dating Services	**The Fort Jackson Leader**	**February 8, 2007**
Costly Cash: The Problem with Payday Loans	**The Fort Jackson Leader**	**September 21, 2006**
Determining Child Support Payments	**The Fort Jackson Leader**	**Published 2006-2007 (exact date unknown)**

8. Public Statements

(A) List any testimony, official statements or other communications, including those made on the Internet including on social media or other digital content sites, relating to matters of public policy that you have issued or provided or that others presented on your behalf to public bodies or officials.

None.

(B) List any speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the dates and places where such speeches or talks were given.

None.

(C) List all interviews you have given to newspapers, magazines or other publications, and radio or television stations (including the dates of such interviews).

None.

9. Agreements or Arrangements

□ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)
Not applicable.		

10. Lobbying

Have you ever registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

11. Testifying Before the Congress

(A) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such Committee?

Yes.

(B) Do you agree to provide such information as is requested by such a committee in a timely and accurate manner?

Yes.

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

SUPPLEMENTAL QUESTIONNAIRE FOR NOMINEES
TO THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS

PUBLIC

1. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels, or conferences of which you are or have been a member, and provide the titles and dates of any offices which you have held in such groups.

   None.

2. **Bar and Court Admission**:

   a. Are you currently a member in good standing of the bar of a Federal court or of the highest court of a state?

      Yes.

   b. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

      State of Maryland, December 14, 2005

      There have been no lapses in membership.

   c. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Provide the same information for administrative bodies that require special admission to practice.

      Supreme Court of the United States, 2014

      Court of Appeals for the Armed Forces, 2012

      There have been no lapses in membership.

3. **Memberships**:

   a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in Response to Question 12 on the Committee's initial questionnaire, to which you belong, or to which you have

belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, or conferences.

None.

b. Indicate whether any of these organizations of which you are a member currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe what efforts, if any, you made to try to change the organization's discriminatory policies or practices.

Not applicable.

4. **Published Writings and Public Statements**:

a. If you have published any written materials (letters to the editor, articles, reports, memoranda, policy statements, friend of the court briefs, testimony or other official statements or communications) relating in whole or in part to matters of public policy or legal interpretation related to veterans issues, please supply those materials to the Committee.

None.

b. Supply transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions that related in whole or in part to veterans issues. If you do not have a copy of the speech or a transcript or recording of your remarks, provide the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

(Note: As to any materials requested in this question, please omit any confidential materials or materials protected by the attorney-client privilege.)

None.

5. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge and, if so, the name of the judge, the court, and the dates of the period you were a clerk;

Prior to my last year of law school, I took a position as a law clerk for the Honorable Dexter M. Thompson, Jr., Administrative Judge for the Circuit Court of Cecil County, Maryland. I do not recall the specific month I started, but it was before I started the fall semester of my 3L year in September 2004. I clerked during the day and finished law school by attending night classes. My role was to generally provide legal support to the Judge, including legal research, drafting and preparing memoranda and opinions, preparing cases for the docket, reviewing case files and motions, attending court daily, and any other duties as determined by the Judge. I also was responsible for managing the law library for the local Cecil County Bar Association. I continued to serve in this role after graduating in May 2005, until I was commissioned as a First Lieutenant in the U.S. Army Judge Advocate General's Corps in January 2006.

ii. whether you practiced alone and, if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2006
Judge Advocate General's Legal Center and School, Officer Basic Course
Charlottesville, Virginia
Student

2007 – 2009
U.S. Army Training Center
Fort Jackson, South Carolina
Trial Counsel and Special Assistant U.S. Attorney

2009 – 2010
101st Airborne Division (Air Assault)
Fort Campbell, Kentucky
Chief of Claims

2010 – 2011
Combined Joint Task Force, Office of the Staff Judge Advocate
Bagram, Afghanistan
Operational Law Attorney, Chief of Legal Assistant and Foreign Claims Attorney and Chief of Administrative Law

2011 – 2013
U.S. Military Entrance Processing Command (USMEPCOM), Office of the Staff Judge Advocate
Great Lakes, Illinois
Trial Counsel and Administrative Law Attorney

2013 – 2015
U.S. Army Communications-Electronics Command (CECOM), Office of the Staff Judge Advocate
Aberdeen Proving Ground, Maryland
Chief of Military Justice and Special Assistant U.S. Attorney; Chief of Administrative and Civil Law

2015 – 2016
Judge Advocate General's Legal Center and School
Charlottesville, Virginia
Graduate Student

2016 – 2018
Judge Advocate General's Legal Center and School, Administrative and Civil Law Department
Charlottesville, Virginia
Professor

2018
Executive Office of the President, Office of White House Counsel
Washington, D.C.
Attorney Advisor

2018 – 2021
Executive Office of the President, Office of White House Counsel
Washington, D.C.
Special Assistant to the President and Senior Associate Counsel

2018 – 2021
151st Legal Operations Detachment
Alexandria, Virginia
Team Chief – U.S. Army Reserve

2021 – 2022
U.S Department of Treasury, Special Inspector General for Pandemic Recovery
Alexandria, Virginia

Special Counsel and Ethics Official

2021 – present
U.S. Military Academy, Department of Law
West Point, New York
Assistant Professor

2022 – present
Commodity Futures Trading Commission
Washington, D.C.
Assistant General Counsel and Ethics Advisor

2025 – present
Executive Office of the President, Office of White House Counsel
Washington, D.C.
Special Counsel to the President and the Alternate Designated Ethics Official for the White House Office and the National Security Council/on detail from Commodity Futures Trading Commission

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the ten most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years;

Upon commissioning, I began my military legal training by attending the 169th Officer Basic Course at Fort Lee, Virginia, and at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

After completing this training in April 2006, I was assigned as a Legal Assistance Attorney and the Office-in-Charge (OIC) of the Personnel Claims Division at the U.S. Army Training Center and Fort Jackson, South Carolina. As a Legal Assistance Attorney and Claims OIC, I provided legal counsel to soldiers, family members, and retirees in all areas of general practice, including family law, consumer law, landlord-tenant relations, and estate planning. I also provided legal counsel to soldiers on military administrative matters and to the Soldier Readiness Processing (SRP) site, where I assisted soldiers mobilizing and deploying in support of Operation Enduring Freedom and Operation Iraqi Freedom. During my time in this role, I was also appointed by the Chief Circuit Judge, 2nd Judicial Circuit, to serve as a part-time military magistrate as an additional duty. In this role, my responsibilities included reviewing pretrial confinement of soldiers in confinement facilities in accordance with the Rules for Courts-Martial (RCM) and issuing search and seizure and search and apprehension authorizations based on probable cause in accordance with the Military Rules of Evidence (MRE).

After serving as a Legal Assistance Attorney, I was reassigned to the Criminal Law Division of the Office of the Staff Judge Advocate (OSJA), where I served as a Trial Counsel and Special Assistant United States Attorney (SAUSA). In this role, I served as the legal advisor on all military justice and general administrative law actions to commanders and staff at Fort Jackson's two Basic Combat Training (BCT) brigades, the 165th and 193rd Infantry Brigades. Additionally, I served as the primary SAUSA responsible for the prosecution of civilian criminal offenses occurring on Fort Jackson and subject to the jurisdiction of a federal magistrate judge in the United States District Court, District of South Carolina.

In June 2009, I was reassigned to serve as the Chief of Claims in the Office of the Staff Judge Advocate, 101st Airborne Division (Air Assault) and Fort Campbell, Kentucky. In this role, I managed the installation Claims Office with a client base of over 32,000 soldiers and a military community of over 232,000 soldiers, family members, retirees, and Department of the Army civilians. We adjudicated claims filed under the Federal Tort Claims Act, the Military Claims Act, and the Personnel Claims Act. I was also appointed by the Chief Circuit Judge, 3rd Judicial Circuit, to again serve as a part-time military magistrate. My responsibilities included reviewing pretrial confinement of soldiers in confinement facilities.

In May 2010, I deployed with Task Force Gladiator, Combined Joint Task Force - 101 (CJTF-101), to Bagram, Afghanistan, as part of Operation Enduring Freedom. For the first half of this year-long deployment, I served as the Chief, Client Services, where I was responsible for all legal assistance and claims support to a deployed 30,000+ member joint-service task force. This involved supervising an office of Army, Navy, and Air Force paralegals, and handling a broad range of legal issues, to include naturalization, veteran's rights, domestic law, estate planning, and military administrative matters. During this time, I also assumed the role of Operational Law Attorney, where I was the CJTF-101's primary judge advocate for all complex legal issues related to the Rules of Engagement, targeting, and Law of War.

For the second half of my deployment, I served as the Chief of Administrative Law, where I was responsible for providing legal advice to the CJTF-101 Commanding General, staff, and subordinate task forces, and serving as the legal advisor for Article 32 hearings, Summary Courts-Martial, financial liability investigations, and all Army Regulation 15-6 investigations. This included investigations into servicemembers killed or seriously wounded in action, civilian casualties, green on blue incidents, downed aircraft, and high value property loss. I continued to serve as a Foreign Claims Commission member, and I was appointed by the Chief Circuit Judge, 8th Judicial Circuit, to serve as the only part-time military magistrate in Afghanistan.

Upon redeployment, I was reassigned to the United States Military Entrance Processing Command (USMPECOM), where I served as a Trial Counsel and Administrative Law Attorney. In this role, I directly advised the USMEPCOM Commander, two brigade-level commands, 12 battalion commands, and all MEPS commanders, on all UCMJ and administrative law matters, including representing the Government in administrative separation boards.

In June 2013, I was reassigned to be the Chief of Military Justice and Criminal Law at the Communications-Electronics Command (CECOM) and Aberdeen Proving Ground (APG), Maryland. In this role, I provided legal advice on all military justice matters to commanders and staff of APG's nearly 80 units and organizations. This included coordinating criminal investigations with state, federal, and military law enforcement, and overseeing the prosecution of all cases involving military members assigned to APG, as well as civilian prosecutions subject to the jurisdiction of a federal magistrate judge in the United States District Court, District of Maryland. I also served as the OSJA's point of contact to the Army's newly created Sexual Harassment/Assault Response and Prevention (SHARP) Office and was appointed by the United States Attorney for the District of Maryland to serve again as a SAUSA.

After a year as the Chief of Military Justice and Criminal Law, I was selected to be the Chief of Administrative and Civil Law at CECOM and APG. In this role, I supervised an office of five judge advocates, two non-commissioned officer paralegals, and five senior civilian attorneys, responsible for all legal advice on matters involving administrative law, including military labor and employment law, fiscal law, environmental law, and ethics. I also served as the acting Deputy Staff Judge Advocate, supervising all personnel in the OSJA.

In June 2016, I began serving as an Associate Professor in the Administrative and Civil Law Department at The Judge Advocate General's Legal Center and School where I taught ethics and administrative investigations to government attorneys. I also served as the command's ethics counselor.

While serving on faculty, I was selected by the Department of Defense General Counsel to be detailed to the Office of the White House Counsel to serve as an ethics counsel, and assist the White House with implementing its ethics and compliance program. Additionally, I provided ethics training to White House employees.

While detailed to the White House, I was offered a career position in the Executive Office of the President, Office of Administration. I left active duty and began serving in this role in October 2018, with my primary focus on ethics and compliance matters. In December 2018, I left this career position with the Office of Administration and was commissioned as a Special Assistant to the President and Senior Associate Counsel in the White House Office. In my civilian capacity at the White House Office, I served as a senior attorney and the Alternate Designated Ethics Official for the White House Office and National Security Council, where I was responsible for implementing the ethics and compliance programs for both components. I also served as a senior attorney and the Designated Agency Ethics Official for the President's Intelligence Advisory Board.

In December 2018, in my U.S. Army Reserve capacity, I was assigned as Team Leader of the Reserve Command Support Team, 151st Legal Operations Detachment (LOD), Alexandria, Virginia. I led this team of four judge advocates in supporting special legal support missions within Virginia and the Military District of Washington. I transitioned in March 2020, again in my U.S. Army Reserve capacity, into a Team Chief role at the 151st LOD. I supervised two Legal Operations Teams, consisting of 12 judge advocates, that focused on administrative law support to Fort Belvoir, Virginia, and legal assistance support to Joint Base Myer-Henderson Hall.

In January 2021 I joined the newly created Special Inspector General for Pandemic Recovery (SIGPR) at the United States Department of the Treasury. I served as a Special Counsel and the Ethics Official for SIGPR, where I led a team of 14 attorneys and criminal investigators in proactive efforts to find and analyze bank filings of suspicious activities related to pandemic fraud and refer those matters to the Department of Justice for prosecution or civil enforcement actions.

In May 2022, I left SIGPR and joined the Commodity Futures Trading Commission (CFTC) as an Assistant General Counsel and Deputy Ethics Counselor. In this role I provide legal advice to the Chairman, Commissioners, and 600+ employees in the agency's 13 operating divisions, on all matters related to ethics and compliance.

Since January 2025, I have been detailed to the Office of White House Counsel to serve as a Special Counsel to the President and the Alternate Designated Ethics Official for the White House Office and the National Security Council. In this role, I provide legal advice to White House and NSC staff on ethics and compliance matters.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized;

The majority of my time practicing law has been in the military as an active duty Army judge advocate, therefore, the areas of practice changed a lot as my military career progressed, as described above. My current practice focuses on ethics and compliance matters at a high level within the executive branch. Given my background in the military and my experience in criminal and administrative law matters, I am occasionally involved in national security matters, investigations, fiscal law, or other administrative law matters.

iii. any law practice or legal experience that involved veterans' law.

I first became involved in veterans law matters as a 2L at law school in 2003. I volunteered at the Veterans Law Clinic at Widener University School of Law. This involved personally interviewing veterans and assisting with developing their claims and representing them before the VA Regional Office. As an active duty judge advocate and a reservist, my practice often touched upon issues affecting both active duty servicemembers and veterans.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
   1. federal courts; **100% (district and military courts)**
   2. state courts of record;
   3. other courts;
   4. administrative agencies.

ii. Indicate the percentage of your practice in:
   1. civil proceedings;
   2. criminal proceedings. **100%**

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried 22 courts-martial to verdict as a trial counsel and supervised the prosecution of six preferred courts-martial (without entering an appearance at trial) as a Chief of Military Justice. I estimate that of the 22 courts-martial I tried, I was sole counsel in one-third of those cases, chief counsel in

another one-third, and co-counsel in the other one-third. I also tried a small number of cases as a SAUSA in federal magistrate court, but I am uncertain of the exact number. The vast majority of these 1,500+ charges were settled prior to trial.

e. Describe your practice, if any, before the Supreme Court of the United States. Supply any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court.

6. **Litigation**: Describe the ten most significant litigated matters that you personally handled, whether or not you were the attorney of record. Provide the citations, if the cases were reported, and the docket number and date if unreported. Provide a summary of the substance of each case. Identify the party or parties whom you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   a. the date of representation;
   b. the name of the court and the name of the judge or judges before whom the case was litigated; and
   c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

   1. *United States v. Sergeant First Class Robert McMillian Jr.* unreported; subsequent history at 68 M.J. 153)(COL Tara A. Osborn, Military Judge) (Representation: 2007)

   I prosecuted Sergeant First Class McMillian, who was the senior drill sergeant in a basic training company at Fort Jackson, South Carolina. He was convicted at a general court-martial in September 2007 of violating a lawful general regulation by having inappropriate sexual contact with two basic training soldiers, making a false official statement, and two specifications of adultery (given the nature of how the UCMJ defined sexual assault at the time, the government was unable to charge him with sexual assault). He was sentenced to confinement for three years, reduction to E-1, and a dishonorable discharge.

   Military Defense Counsel

   CPT LaShanda Ellis-Ramsey
   FEMA Office of Chief Counsel, Legal Counsel and Ethics Division
   500 C Street SW
   Washington, DC 20472
   (757) 268-1428

2. *United States v. Staff Sergeant Alvaro Garcia, Jr.*, ARMY 20080839 (LTC Kirsten V. Brunson, Military Judge) (Representation: 2008).

I prosecuted Staff Sergeant Garcia, a non-commissioned officer. Staff Sergeant Garcia was assigned to the brigade S4 (logistics) office and was responsible for procuring government quarters for soldiers in Puerto Rico being mobilized to support the Global War on Terrorism. He solicited bribes of cash and sexual favors from two competing government contractors, and accepted cash from one of them. He was convicted at a general court-martial in September 2008 of two specifications of bribery. He was sentenced to confinement for one year, forfeiture of all pay and allowances, and reduction to the grade of E-1.

Civilian Defense Counsel

William Cassara
William E. Cassara, Attorney at Law
PO Box 2688
Evans, GA 30809
(706) 445-2915

3. *United States v. Staff Sergeant Edgar Oliva, Jr.*, ARMY 20080774 (COL Tara A. Osborn, Military Judge) (Representation: 2008).

I prosecuted Staff Sergeant Oliva who was a drill sergeant assigned to a Basic Combat Training (BCT) brigade at Fort Jackson, South Carolina. He was convicted at a general court-martial in August 2008 of sexually assaulting a basic training soldier, two specifications of violating a general order, and sodomy. He was sentenced to confinement for 18 months, forfeiture of all pay and allowances, reduction to E-1, and a bad conduct discharge.

Civilian Defense Counsel

Henry Hamilton
Hamilton Law LLC
701 Gervais Street Suite 150-178
Columbia, SC 29201
(803) 779-0700

4. *United States v. Private E1 Javohn C. Smith*, ARMY 20071151 (LTC Edye Moran, Military Judge) (Representation: 2007).

I prosecuted Private Smith, a basic training soldier, after he attacked another basic training soldier in his unit with an entrenching tool, causing serious injury to his head. Smith was convicted at a special court-martial in November 2007 of

aggravated assault. Private Smith was sentenced to confinement for nine months and a bad-conduct discharge.

Military Defense Counsel

CPT LaShanda Ellis-Ramsey
FEMA Office of Chief Counsel, Legal Counsel and Ethics Division
500 C Street SW
Washington, DC 20472
(757) 268-1428

5. *United States v. Staff Sergeant Seth J. Proft* (unreported) (COL Tara A. Osborn, Military Judge) (Representation: 2007).

I prosecuted Staff Sergeant Proft, a drill sergeant in a basic training company at Fort Jackson, South Carolina. Along with two other drill sergeants, he conspired to engage in inappropriate sexual activities with basic training soldiers, identifying them when they first entered the reception battalion at Fort Jackson. Staff Sergeant Proft was convicted at a special court-martial in December 2007 of four specifications of violating a lawful general regulation and four specifications of adultery. He was sentenced to reduction to E-2, four months of confinement, and two months of hard labor.

Military Defense Counsel

CPT LaShanda Ellis-Ramsey
FEMA Office of Chief Counsel, Legal Counsel and Ethics Division
500 C Street SW
Washington, DC 20472
(757) 268-1428

6. *United States v. Staff Sergeant Byron D. Tyson*, ARMY 20090072) (LTC Kirsten V. Brunson, Military Judge) (Representation: 2009).

I prosecuted Staff Sergeant Tyson, a drill sergeant assigned to a basic training company at Fort Jackson, South Carolina. He was convicted at a general court-martial in January 2009 of sexually assaulting a basic training soldier, committing an indecent act with two others, sodomy, adultery, and five specifications of violating a general order. Staff Sergeant Tyson was sentenced to confinement for 18 months, reduction to E-1, and a bad-conduct discharge.

Civilian Defense Counsel

Henry Hamilton
Hamilton Law LLC

701 Gervais Street Suite 150-178
Columbia, SC 29201
(803) 779-0700

7. ***United States v. Private E1 Joseph D. Jackson*, ARMY 20080367) (COL Patrick J. Parrish, Military Judge) (Representation: 2008).**

I prosecuted Private Jackson, a basic training soldier, for being absent without leave, two specifications of violating a lawful order, destruction of military property by neglect, two specifications of larceny, and wrongful appropriation. He was convicted at a general court-martial and sentenced to 18 months confinement and a bad-conduct discharge.

Military Defense Counsel

CPT LaShanda Ellis-Ramsey
FEMA Office of Chief Counsel, Legal Counsel and Ethics Division
500 C Street SW
Washington, DC 20472
(757) 268-1428

8. ***United States v. Private E1 Clayton H. Honeycutt*, ARMY 20080589 (COL Tara A. Osborn, Military Judge) (Representation: 2008).**

I prosecuted Private Honeycutt, a soldier in advanced individual training (AIT) at Fort Jackson, South Carolina. He was charged with sexually assaulting another AIT Soldier at an off-post establishment. He was found guilty at a general court-martial and sentenced to 12 months confinement and a bad-conduct discharge.

Military Defense Counsel

CPT B. Ashley Cole McNorrill
(Deceased)

9. *United States v. Command Sergeant Major Hal Kent* (unreported) (LTC Edye Moran, Military Judge) (Representation:2008).

I prosecuted Command Sergeant Major Kent, a mobilized National Guardsman assigned to Task Force Marshall. He was tasked to train and equip soldiers from the Inactive Ready Reserve who were being surged for deployment overseas in support of Operation Enduring Freedom and Operation Iraqi Freedom. Command Sergeant Major Kent, a soldier with 30+ years in the Army and two tours of duty in Vietnam, was convicted in July 2008 of larceny of government funds when he engaged in a scheme to defraud the government

of Basic Allowance of Housing (BAH) funds. He was reduced to E-8 and fined $1,000 per month for four months.

Military Defense Counsel

LTC James Friend
606 E. Cary Street
Papillion, NE
(910) 728-8102

10. *United States v. Staff Sergeant Justin P. Pierce* (unreported) (LTC Edye Moran, Military Judge) (Representation: 2008).

I prosecuted Staff Sergeant Pierce, a drill sergeant in a basic training company at Fort Jackson, South Carolina. He was convicted at a special court-martial in May 2008 of having inappropriate sexual contact with two basic training soldiers, an indecent act, and two specifications of adultery. He was sentenced to reduction to E-1 and four months of confinement.

Military Defense Counsel

CPT LaShanda Ellis-Ramsey
FEMA Office of Chief Counsel, Legal Counsel and Ethics Division
500 C Street SW
Washington, DC 20472
(757) 268-1428

7. **Judicial Opinions/Offices:**

a. If you are or have ever been a judge, attach a statement providing (1) citations for the ten most significant opinions you have written, (2) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (3) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions were not officially reported, please provide a copy of the opinions.)

I have not served as a judge.

b. State (chronologically) any judicial office you have held and whether you were elected or appointed. Please provide a description of the jurisdiction of each such court.

I have served as a part-time military magistrate on three separate occasions, as described in my response to question 5b. I was appointed by the Chief Circuit Judge, 2nd Judicial Circuit, to serve as a magistrate in 2006 and 2007; appointed by the Chief Circuit Judge, 3rd Judicial Circuit, to again serve as a part-time military magistrate in 2009 and 2010; and lastly, by the Chief Circuit Judge, 8th Judicial Circuit, to serve as a part-time military magistrate in 2010 and 2011. In this role, my responsibilities included reviewing pretrial confinement of soldiers in confinement facilities in accordance with the Rules for Courts-Martial (RCM) and issuing search and seizure and search and apprehension authorizations based on probable cause in accordance with the Military Rules of Evidence (MRE).

8. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities.

   (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

   All of the positions I have had in my legal career have been important and rewarding, but some of the more significant legal activities I have participated in involve my time serving as a military prosecutor, especially in cases that involved sexual assault. This was during a time when reports of sexual assaults were increasing, which led to higher numbers of investigations and prosecutions, and a corresponding demand on prosecutors to zealously prosecute these crimes. I also consider my time serving as an operational law attorney in Afghanistan, where I was directly advising on military operations, a significant and impactful time in my legal career. Lastly, I believe my time serving at the SIGPR was of great significance, where I was responsible for leading a team investigating pandemic fraud during a worldwide pandemic.

9. **Lobbying Activities:** List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

   (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

   I have never served as a lobbyist.

10. **Teaching**: What, if any, courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide copies to the committee.

I taught a number of courses while at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia, from 2016 to 2018. To the best of my recollection, below is a list of courses that I taught, each one on multiple occasions.

- **Judge Advocate Officer Basic Course: taught multiple blocks of instructions on ethics and administrative investigations to new judge advocates.**
- **Judge Advocate Graduate Course: taught multiple blocks of instructions on ethics to graduate students from across all services and allied partners, as part of an LLM program in Military Law.**
- **Senior Officer Legal Orientation: taught ethics and administrative investigations to new battalion and brigade commanders.**
- **General Officer Legal Orientation: taught ethics and administrative investigations to general officers. Most classes were taught in Charlottesville, Virginia, but I also taught this block of instruction at Fort Leavenworth, Kansas.**
- **Ethics Counselors Course: taught multiple blocks of instructions to newly appointed ethics officials from across the Department of Defense.**
- **Advanced Ethics Counselors Course: taught multiple blocks of instructions to experienced ethics officials from across the Department of Defense.**
- **Advanced Leaders Course: taught ethics and administrative investigations to paralegals.**
- **Senior Leaders Course: taught ethics and administrative investigations to senior paralegals.**
- **Judge Advocate Officer Advanced Course: taught ethics and administrative investigations to U.S. Army Reserve and National Guard judge advocates.**
- **Worldwide CLE: taught ethics to all staff judge advocates, deputy staff judge advocates, command judge advocates, and JAG Corps senior leaders at the worldwide CLE event.**

I no longer have copies of these syllabi in my records.

I also taught multiple blocks of instruction of LW403, Constitutional and Military Law, while assigned as an Assistant Professor in the Department of Law at The United States Military Academy, West Point, New York. This course is required for all cadets, and focuses on constitutional law, military justice, and the Law of Armed Conflict (LOAC). Copy of my syllabus is supplied.

Additionally, I have taught a number of Officer Professional Development (OPD) courses during my time in the Army, many of which focused on criminal law. I also taught courses to new commanders and first sergeants, new drill sergeants, MPI, and CID while stationed at Fort Jackson, South Carolina. I do not have copies of syllabi from these courses.

11. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

    No.

12. **Principal Office of the U.S. Court of Appeals:** By statute, the principal office of the U.S. Court of Appeals for Veterans Claims is in the Washington, D.C., metropolitan area. If confirmed, would you maintain your permanent residence within commuting distance of the Court while in active service?

    Yes.

13. **Charitable or Volunteer Work:** Please describe any charitable or volunteer work, including pro bono work, you have performed, particularly any work involving military personnel, veterans, or their families.

    I have volunteered to speak at local elementary schools in support of "Law Day," and supported "Retiree Appreciation Day" at Fort Jackson, South Carolina. I also volunteer as a youth sports coach (soccer and basketball), referee, and for the drama department at my children's school.

LW403 Constitutional and Military Law
Course Administrative Memo
Term 21-5

A. Five Key Points:

1. The Course Objectives.

This course has five key objectives. The first objective is to familiarize you with the Constitution. The Constitution is the world's oldest existing written charter of government, and it serves as the foundation for our nation's laws and system of government. Every commissioned officer swears an oath to support and defend it. Accordingly, every officer should be familiar with the rights it guarantees and the structure of government it creates. Fidelity to the Constitution is also critical to ensuring respect for the rule of law. Respect for rule of law is an essential aspect of command authority and good leadership.

The second objective is to introduce you to other legal regimes that will impact you as a professional military officer. To that end, we will study elements of international law, including treaties and the laws governing armed conflict.

The third objective is to educate you on the military justice system. As an officer, you will make legal decisions and exercise law enforcement powers in ways that affect soldiers. The course will introduce you to the basic rules and procedures of the military justice system.

The fourth objective is to fulfill one of the "Writing-in-the-Profession" requirements of the West Point Writing Program. During the course, your professor will assess your writing proficiency and help foster your growth as a writer.

The final objective is to further develop your critical thinking and analytical skills. The course will expose you to constitutional law and military justice issues that are complex and will require you to be discerning in your analysis. Moreover, you will be expected to express yourself clearly and concisely when evaluating these issues. The ability to think critically, be judicious, and express your opinions articulately are fundamental to successful leadership.

2. The Lessons.

The course syllabus describes the subject and scope of each individual lesson. The syllabus further outlines the framework of the various lessons, which build on concepts and ideas presented throughout the course.

Many of the assigned readings involve cases. Cases help define and refine the meaning of the Constitution and the individual rights it guarantees. Accordingly, studying cases and the legal analysis supporting court decisions is one of the most effective ways to understand the law and our legal system. Additionally, as an officer, you will be expected to evaluate disparate facts and circumstances when making decisions that have legal consequences. Case studies will help prepare you to apply the law to facts.

3. Assessment (Grades).

Your final grade will reflect your performance on three major graded events (two WPRs and the TEE), as well as the quality of your class preparation. The WPRs and the TEE will consist of objective questions and essay or short answer questions that test your ability to analyze and think critically about a legal question. WPR 2 will include an essay question that will assess your

ability to evaluate a legal problem, provide support for your arguments, and express yourself clearly in writing. The TEE will cover material addressed throughout the course and serves as the culminating event for LW403. Your instructors will determine your class preparation grade based on various factors, including your class participation and contributions to in-class discussions.

4. How to Succeed in the Course.

Without question, the single most important factor in determining success in this course is whether you complete the assigned readings. Class discussions, exams, and written assignments will be based on the readings designated on the syllabus. Therefore, completing the reading assignments is critical to your success as graded events will be based in large part on the material contained in the readings. Relying solely on previously prepared notes or outlines is not an adequate substitute for reading the assigned material. Abbreviated study aids simply cannot impart the nuanced insights you achieve when you wrestle with the ideas presented in the course documents.

B. Administrative Matters:

1. Course Materials.

a. OTIS H. STEPHENS, JR. AND JOHN M. SCHEB II, AMERICAN CONSTITUTIONAL LAW (VOLS. 1 & 2) (6th ed., 2014).

b. Additional readings available on Microsoft Teams. These readings include selections from Professor Gary Solis's book THE LAW OF ARMED CONFLICT: INTERNATIONAL HUMANITARIAN LAW IN WAR. The readings from this work are protected by copyright, which means the document cannot be reproduced or distributed without authorization. Professor Solis has graciously granted the Department of Law approval to use these materials solely for LW403.

2. Class Attendance and Additional Instruction.

a. LW403 is a 3.0 credit course. If you have an authorized absence from class or are excused from grading for a class, you are still responsible for completing the assigned work.

b. Additional Instruction (AI). Do not hesitate to coordinate AI with any co-instructor of this course for AI. You are encouraged to seek AI as often as you think necessary.

3. Classroom Standards and Electronics Policy:

a. Cadets are expected to maintain a high and consistent level of discipline and professionalism in the classroom. To the extent possible, standards will comport with the Dean's policy memorandum dated 7 July 2016.

4. Graded Events.

a. General. Your LW403 grade will be calculated as follows:

WPR 1	175 points
WPR 2	175 points
TEE	350 points
Class Preparation Grade	100 points

Total	800 points

e. Class Preparation Grade.

1. Your instructors will consider a variety of factors when determining your class preparation grade. Your preparation for class and regular, substantive participation during class discussions will positively affect your grade. Other factors that may influence your preparation grade include your performance on case briefs.

2. You are not eligible to receive any of the 100 points available for class preparation unless your overall average grade at the end of the semester is a D or higher. If your overall average grade after the completion of all assignments (i.e., WPRs and TEE) is an F, your grade for the course will be an F. Points awarded for class preparation cannot be added to a failing grade for the course. In other words, class preparation points cannot raise a failing grade to a passing grade for the course.

5. Grading Scale.

a. The grading scale is:

Letter Grade	Percentage of Marks Earned
A+	97-100
A	93-96.99
A-	90-92.99
B+	87-89.99
B	83-86.99
B-	80-82.99
C+	77-79.99
C	73-76.99
C-	70-72.99
D	67-69.99
F	0-66.99

b. You must attain at least a grade of "D" (67% average) to pass LW403.

6. Re-grade Policy. A request for the re-grade of an assignment must be submitted in writing to the Course Director no more than five calendar days after receipt of notification of the grade. The request must state clearly and with specificity the reasons why the re-grade is being sought. The Head, Department of Law, must approve all re-grade requests. Submissions approved for reconsideration will be re-evaluated and re-graded as described below. Submissions disapproved for reconsideration will not be re-graded, and the original assignment grade will stand.

a. If a request for a re-grade is approved by the Head, Department of Law, the assignment will be re-graded by two members of the Department of Law faculty. The identity of the requestor will remain anonymous, and all information that could identify the requestor on the submission will be redacted or concealed prior to the faculty members' review.

b. After reviewing the assignment, each professor will submit his or her grade to the LW403 Course Director. The Course Director will adjust the requestor's assignment grade based on the input from the two re-graders. The adjusted grade will be the average of the two re-graders' recommended grades. The assignment grade could either increase or decrease as a result of this process. The resulting grade, whether higher or lower, will be final.

7. Absences from the TEE. Conflicts with the date of the TEE must be resolved through the Dean's office. The Department of Law cannot authorize you to take the TEE other than at the scheduled time.

8. Writing-in-the-Profession Requirement. This class serves as a Writing-in-the-Profession course in the West Point Writing Program. WPR 2 has also been designated a Signature Writing Event (SWE). Accordingly, in addition to a course grade, you will receive an SWE assessment for an essay designated in WPR 2. The SWE assessment is separate from the course grade. You must upload a copy of the SWE assignment to your Cadet Writer ePortfolio on BlackBoard to complete the SWE.

9. Documentation Policy. The Honor Code and Honor System apply to all aspects of cadet life, to include activities as a student and a scholar. Additionally, integrity, one of the seven Army Values, is fundamental to the Profession of Arms. Academic integrity obliges cadets to be professional, conscientious, and truthful in differentiating their own work from that of others and in crediting others for their work or ideas. A cadet's submission must reflect clearly his or her own effort. It is therefore the policy of the Department of Law that all graded submissions clearly indicate any assistance received and all sources used in the preparation of the product.

//Original Signed//

Encl

RONALD ALCALA
LTC, JA
Department of Law
Course Director, Law 403

LW403 Constitutional and Military Law
Term 21-5 (STAP 3)

Texts: Stephens/Scheb, AMERICAN CONSTITUTIONAL LAW 6TH ED (2014) (ACL) VOL. 1 & 2;
Supplementary Readings Available on Teams

LESSON	TOPIC	READINGS
	PART I **THE AMERICAN CONSTITUTIONAL SYSTEM**	
	Tuesday, 6 July 2021 (0845-1200, Remote)	
Lesson 1 Prof. McCarthy	**a. Introduction and Review of Syllabus** **b. Rule of Law: The Balance Between National Security and Individual Liberty** • How should courts balance individual liberty with national security in times of crisis?	a. Course Admin Memo; ACL 1: pages 1-25, Appendix A, A1-11 (The Constitution of the United States of America) b. **ACL 1**: pages 225-226, 254-257 (*Korematsu v. United States*)
Lesson 2 MAJ Wright	**Article I: Congress' Express Powers & The Commerce Clause** • What are the constitutional sources of congressional power? • What are "express" or "enumerated" powers? • What is the Commerce Clause? • How did the Supreme Court interpret the Commerce Clause in the assigned cases?	**ACL 1**: pages 115-125; 146-149 (*Gibbons v. Ogden*); 158-161 (*Wickard v. Filburn*) 161-162 (*Heart of Atlanta v. U.S.*); 164-166 (*U.S. v. Lopez*)
	Wednesday, 7 July 2021 (0845-1200, Remote)	
Lesson 3 MAJ Wright	**Article I: Congress' Implied Powers & The Necessary & Proper Clause** • What is the doctrine of implied powers? • What is the Necessary and Proper Clause? • How has the doctrine of implied powers affected Congress' ability to legislate?	**ACL 1**: pages 108-112; 137-140 (*McCulloch v. Maryland*)
Lesson 4 LTC Wilson	**Article II: Executive Power in Domestic Affairs** • How does the Constitution define "executive power"? • What theories have been used to interpret executive power? • How has the Supreme Court interpreted executive power in domestic affairs?	**ACL 1**: pages 201-204; 231-236 (*Youngstown Sheet & Tube Company v. Sawyer*)

Thursday, 8 July 2021 (Course Drop)

Course Drop	**Course Drop – No Lessons**	

Friday, 9 July 2021 (0845-1200, TH444)

Lesson 5 LTC Wilson	**Article II: Executive Power in Foreign Affairs and War** • What powers may the executive exercise in foreign affairs and war? • Is there a difference between the exercise of executive power in domestic and foreign affairs?	**ACL 1:** pages 214-218; 246-248 (*U.S. v. Curtiss-Wright*); 252-254 (*The Prize Cases*)
Lesson 6 LTC Park	**Article III: The Federal Courts & Judicial Review of Federal Law and of State Actions** • How does the Constitution define "judicial power"? • What is judicial review? • What were the Supreme Court's legal arguments for asserting judicial review in *Marbury v. Madison*? • How does judicial review apply to both federal law and state actions?	**ACL 1**: pages 51-54; 87-89 (*Marbury v. Madison*); 76-77; 97-99 (*Cooper v. Aaron*)

*11 July 2021 Evening, Voluntary Remote Review Session for Part I, time TBD, Prof. McCarthy

Monday, 12 July 2021 (1100-1155, TH444)

Lesson 7	**WPR 1**	Coverage: Lessons 1-6

PART II
CONSTITUTIONAL RIGHTS

Tuesday, 13 July 2021 (0845-1200, TH444)

Lesson 8	**Free Speech: The Bounds of Expression** • What standards of review (levels of scrutiny) apply when determining the constitutionality of laws? • How does the First Amendment protect freedom of expression?	**ACL 2:** pages 34-35; 136-138; 184-185 (*Brandenburg v. Ohio*); 188-191 (*Texas v. Johnson*); **Teams reading:** (*Ward v. Rock Against Racism)*

LTC Wilson	• What is the difference between content based and content neutral speech restrictions?	
Lesson 9 Prof. McCarthy	**Free Speech (Continued): Expression & the Military** • How does the right to freedom of expression differ for members of the military? Why is the right to freedom of expression different for members of the military? Is this difference justifiable?	**Coverage: Lessons 8-16** **Teams readings:** (*Parker v. Levy); (Greer v. Spock)*

Wednesday, 14 July 2021 (0845-1200, TH444)

Lesson 10 Prof. McCarthy	**Religion & The Establishment Clause** • What is the Establishment Clause, and what does it require? • How do courts determine whether a law or policy is constitutional under the Establishment Clause?	**ACL 2:** pages 230-232, 266-270 (*Santa Fe Independent School Dist. v. Doe*); **Teams readings:** (*Town of Greece v. Galloway*)
Lesson 11 COL Dougherty	**Religion & The Free Exercise Clause** • How does the First Amendment protect freedom of religion? • What is the Free Exercise Clause, and what does it require? • How do courts determine whether a policy is constitutional under the Free Exercise Clause?	**ACL 2:** pages 218-227; 251-255 (*Employment Division v. Smith*); 255-258 (*Church of the Lukumi v. Hialeah*)

Thursday, 15 July 2021 (0845-1200, TH444)

Lesson 12 LTC Jones	**Religion & the Military** • How do the establishment clause and free exercise clause apply to members of the military?	**Teams readings:** (*Mellon v. Bunting*); (*Katcoff v. Marsh*)
Lesson 13 MAJ Wright	**Equal Protection & Race I** • What is the Equal Protection Clause? • How is the Equal Protection Clause applied to issues of race?	**ACL 1:** pages 56-57, 91-95 *(Scott v. Sandford)*; **ACL 2:** pages 453-459; 490-92 (*Plessy v. Ferguson*)

Friday, 16 July 2021 (0845-1200, TH444)

Lesson 14 LTC Wilson	**Equal Protection & Race II** • How has the Supreme Court's interpretation of the Equal Protection Clause evolved?	**ACL 2:** pages 460-64; 495-496 (*Brown v. Board of Education*); 498-500 (*Loving v. Virginia*)
Lesson 15 Prof. McCarthy	**Race & Affirmative Action; Gender Discrimination** • Is affirmative action constitutional? • Are gender-based policies constitutional? • What standard of review do courts apply to race-based and gender-based policies?	**ACL 2**: pages 472-477; pages 505-510 (*Grutter v. Bollinger*); pages 514-516 (*United States v. Virginia*)

Monday, 19 July 2021 (0845-1200, TH444)

Lesson 16 LTC Jones	**Reproductive Rights** • What is the right to privacy? • Where does the right to privacy come from? • What is the relationship between the right to privacy and reproductive rights? • How has the Supreme Court balanced the right to abortion with state interests in regulating abortion?	**ACL 2**: pages 384-392; 421-427 (*Planned Parenthood of Southeastern PA v. Casey*)
Lesson 17 COL Dougherty	**2nd Amendment: Right to Bear Arms** • Is the right to keep and bear arms an individual right or a right inextricably tied to militia service? • What guidelines has the Supreme Court provided in interpreting the constitutionality of gun laws?	**ACL 2:** pages 14-16; **Teams reading:** (*D.C. v. Heller*)

*19 July 2020 Evening, Voluntary Remote Review Session for Part II, TBD, Prof. McCarthy

Tuesday, 20 July 2021 (1100-1155, WPR TH444)

Lesson 18	**WPR #2 (including Signature Writing Event)**	**Coverage: Lessons 8-17**

PART III
CONSTITUTIONAL RIGHTS, CRIMINAL PROCEDURE & THE LAW OF ARMED CONFLICT

Wednesday, 21 July 2021 (0845-1200, TH444)

Lesson 19 COL Dougherty	**4th Amendment: The Reasonable Expectation of Privacy & Warrants and Warrantless Searches** • What right does the 4th Amendment recognize? • How has the Supreme Court sought to protect that right? • What is a "reasonable expectation of privacy" and why is it significant? • What is a warrant, and when is a warrant required? • What is a warrantless search? • Are warrantless searches constitutional? • What are the exceptions to the warrant requirement, and what rationales underlie these exceptions?	**ACL 2:** pages 296-305; 344-46 (*Katz v. U.S.*); **Teams readings:** (*Thompson v. Louisiana); (Maryland v. Dyson)*; (*Riley v. California)*
Lesson 20 Prof. McCarthy	**4th Amendment & the Military: Inspections, Privacy & Probable Cause** • How does application of the 4th Amendment differ in the military? • What is the difference between a search and an inspection in the military?	**Teams readings**: (*U.S. v. Campbell); (U.S. v. Huntzinger)*

Thursday, 22 July 2021 (0845-1200, TH444)

Lesson 21 LTC Wilson	**5th Amendment – Civilian Standard** • What right does the 5th Amendment recognize? • How has the Supreme Court sought to protect that right in the civilian context? • What is "custodial interrogation" and why is it significant?	**ACL 2** pages 311-314; **Teams readings:** (*Stansbury v. California); (Rhode Island v. Innis);*
Lesson 22 LTC Jones	**5th Amendment in the Military** • How does the application of the 5th Amendment differ in the military?	**Teams readings:** *(U.S. v. Ravenel); (U.S. v. Swift)*

Friday, 23 July 2021 (0845-1200, TH444)

Lesson 23 MAJ Wright	**Administrative Due Process** • What is administrative due process? • When might a commander choose to impose administrative disciplinary measures? • What are a commander's options for imposing administrative disciplinary measures?	**Teams readings**: Military Administrative Due Process; *(U.S. v. McAllister)*
Lesson 24 LTC Jones	**Non-Judicial Punishment and the Court Martial Process** • What is non-judicial punishment (NJP)? • When might a commander choose to impose NJP? • What is a court-martial? • When might a commander choose to recommend trial by court-martial? • What does the typical court-martial process look like, and who is responsible for making decisions along the way?	**Teams readings:** Nonjudicial Punishment & Trial by Court-Martial; *(U.S. v. Burns)*

Monday, 26 July 2021 (0845-1200, TH444)

Lesson 25 COL Dougherty	**Unlawful Command Influence** • What is unlawful command influence (UCI)? • How can UCI affect the prosecution of a case before or during a court-martial?	**Teams readings:** UCI reading; (*U.S. v. Gerlich); (U.S. v. Thomas); (U.S. v. Baldwin)*
Lesson 26 MAJ Wright	***Jus Ad Bellum* (the Rules for Going to War)** • What is the *jus ad bellum*? • How is the use of force by states regulated under international law?	**Teams reading**: pages 3-9 of Corn Article and the U.N. Charter

LW 403 Constitutional and Military Law STAP LW403 21-5
Class Schedule and Reading Assignments

Tuesday, 27 July 2021 (0845-1200, TH444)

Lesson 27 COL Dougherty	**The Law of Armed Conflict: Conflict and Individual Status** • How may conflicts be classified under LOAC? • What is an "international armed conflict" (IAC)? What rules apply during an IAC? • What is a "non-international armed conflict" (NIAC)? What rules apply during a NIAC? • How do IAC and NIAC rules differ with regard to personnel? • What is the difference between a combatant and a non-combatant and how are they distinguished in an armed conflict? • Who is entitled to prisoner of war status under LOAC?	**Teams reading:** Solis 159-165; 201-216; Read Common Article 2 and Common Article 3
Lesson 28 Small Group Lesson and Practical Exercise with FDW Instructors	**Principles of the Law of Armed Conflict and Practical Exercise** • What are the principles of LOAC? • How do these principles apply in armed conflict?	**Teams reading:** Solis 268-305

Wednesday, 28 July 2021 (0845-1200, TH444)

Lesson 29 Prof. McCarthy	**Rules of Engagement** • What are "Rules of Engagement" (ROE)? • What considerations influence the creation of the ROE? • What purpose does the ROE serve?	**Teams readings:** Solis 476-498
Lesson 30 MAJ Wright	**Obedience to Orders & Command Responsibility** • What is command responsibility? • What is the doctrine of *respondeat superior*? • When may a commander be held responsible for LOAC violations under the doctrine of command responsibility? • Are servicemembers required to obey all superior orders? • What should a servicemember do if given an illegal order?	**Teams readings:** Solis 390-403; Solis 418-433

Thursday, 29 July 2021 (Reading Day)

Reading Day	**Reading Day – No Lessons**	

*29 July 2021, Voluntary Remote Review Session for TEE, TBD, Prof. McCarthy

Friday, 30 July 2021 (TEE, 0845-1200, TH444)

TEE	TEE	Coverage: Lessons 1-30

LW403L Constitutional and Military Law
Term 22-5 (STAP 3) – Law Annex - Building 606, 3rd Floor - Rear

Texts: Stephens/Scheb, AMERICAN CONSTITUTIONAL LAW 6TH ED (2014) (ACL) VOL. 1 & 2;
Supplementary Readings Available on Teams

LESSON	TOPIC	READINGS
	PART I **THE AMERICAN CONSTITUTIONAL SYSTEM**	
	Wednesday, 6 July 2022 (0845-1200, Law Annex)	
Lesson 1 **CPT Dunlop**	**a. Introduction and Review of Syllabus** **b. Rule of Law: The Balance Between National Security and Individual Liberty** • How should courts balance individual liberty with national security in times of crisis?	a. Course Admin Memo; ACL 1: pages 1-25, Appendix A, A1-11 (The Constitution of the United States of America) b. **CML** pages 169-179 (*Korematsu v. United States*)
Lesson 2 **MAJ Wright**	**Article I: Congress' Express Powers & The Commerce Clause** • What are the constitutional sources of congressional power? • What are "express" or "enumerated" powers? • What is the Commerce Clause? • How did the Supreme Court interpret the Commerce Clause in the assigned cases?	**CML**: pages 51–57 (*Gibbons v. Ogden*); 59–62 (*Wickard v. Filburn*); pages 63–64 (*Heart of Atlanta v. U.S.*); 64–69 (*Katzenbach v. McClung*); 71–82 (*U.S. v. Lopez*)
	Thursday, 7 July 2022 (0845-1200, Law Annex)	
Lesson 3 **LTC Jones**	**Article I: Congress' Implied Powers & The Necessary & Proper Clause** • What is the doctrine of implied powers? • What is the Necessary and Proper Clause? • How has the doctrine of implied powers affected Congress' ability to legislate?	**CML** pages 33-49 (*McCulloch v. Maryland*)
Lesson 4 **MAJ Feldmeier**	**Article II: Executive Power in Domestic Affairs** • How does the Constitution define "executive power"? • What theories have been used to interpret executive power? • How has the Supreme Court interpreted executive power in domestic affairs?	**CML** pages 83–97 (*Youngstown Sheet & Tube Company v. Sawyer*)

Friday, 8 July 2022 (0845-1200, Law Annex)

Lesson 5 **LTC Jones**	**Article II: Executive Power in Foreign Affairs and War** • What powers may the executive exercise in foreign affairs and war? • Is there a difference between the exercise of executive power in domestic and foreign affairs?	**CML** pages 97-106 (*United States v. Curtiss-Wright*); 107-119 (*Zivotofsky v. Kerry*); **Teams reading for lesson 7** (*Prize Cases*)
Lesson 6 **MAJ Wright**	**Article III: The Federal Courts & Judicial Review of Federal Law and of State Actions** • How does the Constitution define "judicial power"? • What is judicial review? • What were the Supreme Court's legal arguments for asserting judicial review in *Marbury v. Madison*? • How does judicial review apply to both federal law and state actions?	**CML** pages 5–21 (*Marbury v. Madison*)**;** 21-31 (*Cooper v. Aaron*)

Saturday, 9 July 2022 (0845-1200, Law Annex)

Lesson 7 **CPT Dunlop**	**WPR 1 Review** **WPR 1**	Coverage: Lessons 1-6

PART II
CONSTITUTIONAL RIGHTS

Monday, 11 July 2022 (0845-1200, Law Annex)

Lesson 8 **MAJ Feldmeier**	**Free Speech: The Bounds of Expression** • What standards of review (levels of scrutiny) apply when determining the constitutionality of laws? • How does the First Amendment protect freedom of expression? • What is the difference between content based and content neutral speech restrictions?	**CML** pages 219–236 (*Ward v. Rock Against Racism*); 237–242 (*Brandenburg v. Ohio*); 243-253 (*Texas v. Johnson*)
Lesson 9 **LTC Jones**	**Free Speech (Continued): Expression & the Military** • How does the right to freedom of expression differ for members of the military?	**Teams readings:** (*Parker v. Levy); (Greer v. Spock)*

	Why is the right to freedom of expression different for members of the military? Is this difference justifiable?	

Tuesday, 12 July 2022 (0845-1200, Law Annex)

Lesson 10 **MAJ Wright**	**Religion & The Establishment Clause** • What is the Establishment Clause, and what does it require? • How do courts determine whether a law or policy is constitutional under the Establishment Clause?	**CML** pages 255–83 (*Santa Fe Independent School Dist. v. Doe*); **Teams readings:** (*Town of Greece v. Galloway*)
Lesson 11 **MAJ Feldmeier**	**Religion & The Free Exercise Clause** • How does the First Amendment protect freedom of religion? • What is the Free Exercise Clause, and what does it require? • How do courts determine whether a policy is constitutional under the Free Exercise Clause?	**CML** pages 285–304 (*Employment Division v. Smith*); 305–314 (*Church of the Lukumi v. Hialeah*)

Wednesday, 13 July 2022 (Reading Day – No Lessons)

Reading Day	**Reading Day – No Lessons**	

Thursday, 14 July 2022 (0845-1200, Law Annex)

Lesson 12 **LTC Jones**	**Religion & the Military** • How do the establishment clause and free exercise clause apply to members of the military?	**Teams readings:** (*Mellon v. Bunting*); (*Katcoff v. Marsh*)
Lesson 13 **MAJ Wright**	**Equal Protection & Race I** • What is the Equal Protection Clause? • How is the Equal Protection Clause applied to issues of race?	**CML** pages 159-167 (*Scott v. Sandford*); 181-85 (*Plessy v. Ferguson*)

LW 403 Constitutional and Military Law STAP LW403L 22-5
Class Schedule and Reading Assignments

Friday, 15 July 2022 (0845-1200, Law Annex)

Lesson 14 **MAJ Feldmeier**	**Equal Protection & Race II** • How has the Supreme Court's interpretation of the Equal Protection Clause evolved?	**CML:** 187-194 (*Brown v. Board of Education*); 194-98 (*Loving v. Virginia*)
Lesson 15 **LTC Jones**	**Race & Affirmative Action; Gender Discrimination** • Is affirmative action constitutional? • Are gender-based policies constitutional? • What standard of review do courts apply to race-based and gender-based policies?	**CML**: (*Grutter v. Bollinger*); pages 211-217 (*United States v. Virginia*)

Saturday, 16 July 2022 (0845-1155, Law Annex)

Lesson 16 **MAJ Wright**	**Reproductive Rights** • What is the right to privacy? • Where does the right to privacy come from? • What is the relationship between the right to privacy and reproductive rights? • How has the Supreme Court balanced the right to abortion with state interests in regulating abortion?	**CML** pages 137-158 (*Planned Parenthood of Southeastern PA v. Casey*)
Lesson 17 **MAJ Feldmeier**	**2nd Amendment: Right to Bear Arms** • Is the right to keep and bear arms an individual right or a right inextricably tied to militia service? • What guidelines has the Supreme Court provided in interpreting the constitutionality of gun laws?	**Teams reading:** (*D.C. v. Heller*)

Monday, 18 July 2022 (0845-1200, Law Annex)

Lesson 18 **CPT Dunlop**	**Review WPR 2** **WPR #2 (including Signature Writing Event)**	**Coverage: Lessons 8-17**

PART III
CONSTITUTIONAL RIGHTS, CRIMINAL PROCEDURE & THE LAW OF ARMED CONFLICT

Tuesday, 19 July 2022 (0845-1200, Law Annex)

Lesson 19 **COL Dowdy**	**4th Amendment: The Reasonable Expectation of Privacy & Warrants and Warrantless Searches** • What right does the 4th Amendment recognize? • How has the Supreme Court sought to protect that right? • What is a "reasonable expectation of privacy" and why is it significant? • What is a warrant, and when is a warrant required? • What is a warrantless search? • Are warrantless searches constitutional? • What are the exceptions to the warrant requirement, and what rationales underlie these exceptions?	**CML** pages 315-325 (*Katz v. United States*); **Teams readings:** (*Thompson v. Louisiana); (Maryland v. Dyson)*; (*Riley v. California)*
Lesson 20 **LTC Stigall**	**4th Amendment & the Military: Inspections, Searches, Privacy, & Probable Cause** • How does application of the 4th Amendment differ in the military? • What is the difference between a search and an inspection in the military?	**CML** 415-427 (*U.S. v. Campbell*);**Teams readings**: (*U.S. v. Huntzinger)*

Wednesday, 20 July 2022 (0845-1200, Law Annex)

Lesson 21 **COL Dowdy**	**5th Amendment – Civilian Standard** • What right does the 5th Amendment recognize? • How has the Supreme Court sought to protect that right in the civilian context? • What is "custodial interrogation" and why is it significant?	**Teams readings:** (*Stansbury v. California); (Rhode Island v. Innis);*
Lesson 22 **LTC Stigall**	**5th Amendment in the Military** • How does the application of the 5th Amendment differ in the military from its application in a civilian context?	**Teams readings:** *(U.S. v. Ravenel); (U.S. v. Swift)*

Thursday, 21 July 2022 (0845-1200, Law Annex)

Lesson 23 **MAJ Wright**	**Administrative Due Process** • What is administrative due process? • When might a commander choose to impose administrative disciplinary measures? • What are a commander's options for imposing administrative disciplinary measures?	**Teams readings**: Military Administrative Due Process*; (U.S. v. McAllister)*
Lesson 24 **LTC Jones**	**Non-Judicial Punishment and the Court Martial Process** • What is non-judicial punishment (NJP)? • When might a commander choose to impose NJP? • What is a court-martial? • When might a commander choose to recommend trial by court-martial? • What does the typical court-martial process look like, and who is responsible for making decisions along the way?	**Teams readings:** Nonjudicial Punishment & Trial by Court-Martial*; (U.S. v. Burns)*

Friday, 22 July 2022 (0845-1200, Law Annex)

Lesson 25 **COL Dowdy**	**Unlawful Command Influence** • What is unlawful command influence (UCI)? • How can UCI affect the prosecution of a case before or during a court-martial?	**Teams readings:** UCI reading; (*U.S. v. Gerlich); (U.S. v. Thomas); (U.S. v. Baldwin)*
Lesson 26 **MAJ Wright**	***Jus Ad Bellum* (the Rules for Going to War)** • What is the *jus ad bellum*? • How is the use of force by states regulated under international law?	**Teams reading**: pages 3-9 of Corn Article and the U.N. Charter

Saturday, 23 July 2022 (Reading Day – No Lessons)

Reading Day	**Reading Day – No Lessons**	

Monday, 25 July 2022 (0845-1200, Law Annex)

Lesson 27 **MAJ Feldmeier**	**The Law of Armed Conflict: Conflict and Individual Status** • How may conflicts be classified under LOAC? • What is an "international armed conflict" (IAC)? What rules apply during an IAC? • What is a "non-international armed conflict" (NIAC)? What rules apply during a NIAC? • How do IAC and NIAC rules differ with regard to personnel? • What is the difference between a combatant and a non-combatant and how are they distinguished in an armed conflict? • Who is entitled to prisoner of war status under LOAC?	**Teams reading:** Solis 159-165; 201-216; Read Common Article 2 and Common Article 3
Lesson 28 Small Group Lesson and Practical Exercise with FDW Instructors	**Principles of the Law of Armed Conflict and Practical Exercise** • What are the principles of LOAC? • How do these principles apply in armed conflict?	**Teams reading:** Solis 268-305

Tuesday, 26 July 2022 (0845-1200, Law Annex)

Lesson 29 **LTC Jones**	**Rules of Engagement** • What are "Rules of Engagement" (ROE)? • What considerations influence the creation of the ROE? • What purpose does the ROE serve?	**Teams readings:** Solis 476-498
Lesson 30 **MAJ Wright**	**Obedience to Orders & Command Responsibility** • What is command responsibility? • What is the doctrine of *respondeat superior*? • When may a commander be held responsible for LOAC violations under the doctrine of command responsibility?	**Teams readings:** Solis 390-403; Solis 418-433

	• Are servicemembers required to obey all superior orders? • What should a servicemember do if given an illegal order?	

Wednesday, 27 July 2022 (TEE REVIEW, 0845-1200, Law Annex)

TEE REVIEW **CPT Dunlop**	TEE REVIEW	Coverage: Lessons 1-30

Thursday, 28 July 2022 (TEE – 0845-1200, Law Annex)

TEE	TEE	Coverage: Lessons 1-30

LW403 Constitutional and Military Law
Syllabus and Class Schedule
Term 23-5

Texts:

- CONSTITUTIONAL AND MILITARY LAW COURSE READER (2022-2023) **(CML)**, which includes:
  - Maggs & Smith, *Constitutional Law* (Undergraduate Edition), vol. 1 & 2.
  - Lisa Schenck, *Modern Military Justice: Cases and Materials*
- *Constitutional and Military Law Supplementary Materials* (available on Microsoft Canvas)

INTRODUCTION

LESSON	TOPIC	READINGS
7 July 2023		
Lesson 1 7 Jul 23 8:45-9:40 LTC Chiaramonte	**Introduction and Review of Syllabus** • Understanding the IRAC method	Course Admin Memo; **CML** pages 121-132 (*The U.S. Constitution*)

PART I
THE AMERICAN CONSTITUTIONAL SYSTEM

9:40-10:45	**BREAK (prep for class, AI, etc.)**	
Lesson 2 7 Jul 23 10:45-11:40 LTC Chiaramonte	**Rule of Law: The Balance Between National Security & Individual Liberty** • How should courts balance individual liberty with national security in times of crisis? • How do we differentiate the facts, "rights," and scrutiny the Court applied in *Korematsu v. United States* and *Trump v. Hawaii?*	**CML** pages 169-179 (*Korematsu v. United States*); **Canvas reading for Lesson 2** (*Trump v. Hawaii*)
8 JULY 2023		
Lesson 3 8 Jul 23 8:45-9:40 MAJ Wright	**Article I: Congress' Express Powers I** • What are the constitutional sources of congressional power? • What are "express" or "enumerated" powers? • What is the Commerce Clause? • How did the Supreme Court interpret the Commerce Clause in *Gibbons v. Ogden* and *Wickard v. Filburn*?	**CML** pages 51–57 (*Gibbons v. Ogden*); 59–62 (*Wickard v. Filburn*)
9:40-10:45	**BREAK**	
Lesson 4 8 Jul 23 10:45-11:40	**Article I: Congress' Express Powers II** • What is the Commerce Clause?	**Canvas Reading:** (*Heart of Atlanta Hotel v. United States*); **CML** pages 64–69

LESSON	TOPIC	READINGS
MAJ Wright	• How did the Supreme Court interpret the Commerce Clause in *Heart of Atlanta v. U.S.*, *Katzenbach v. McClung* and *U.S. v. Lopez*? • How have Supreme Court cases changed our understanding of the Commerce Clause?	(*Katzenbach v. McClung*); 71–82 (*U.S. v. Lopez*)

10 July 2023

Lesson 5 10 Jul 23 8:45-9:40 LTC Jones	**Article I: Congress' Implied Powers** • What is the doctrine of implied powers? • What is the Necessary and Proper Clause? • How has the doctrine of implied powers affected Congress' ability to legislate?	**CML** pages 33-49 (*McCulloch v. Maryland*)
9:40-10:45	**BREAK**	
Lesson 6 10 Jul 23 10:45-11:40 LTC Stigall	**Article II: Executive Power in Domestic Affairs** • How does the Constitution define "executive power"? • What theories have been used to interpret executive power? • How has the Supreme Court interpreted executive power in domestic affairs?	**CML** pages 83–97 (*Youngstown Sheet & Tube Company v. Sawyer*)

11 July 2023

Lesson 7 11 Jul 23 8:45-9:40 LTC Jones	**Article II: Executive Power in Foreign Affairs and War** • What powers may the executive exercise in foreign affairs and war? • Is there a difference between the exercise of executive power in domestic and foreign affairs?	**CML** pages 97-106 (*United States v. Curtiss-Wright*); 107-10:459 (*Zivotofsky v. Kerry*); **Canvas reading for lesson 7** (*Prize Cases*)
9:40-10:45	**BREAK**	
Lesson 8 11 Jul 23 10:45-11:40 COL Downey	**Article III: The Federal Courts & Judicial Review of Federal Law** • How does the Constitution define "judicial power"? • What is judicial review? • What were the Supreme Court's legal arguments for asserting judicial review in *Marbury v. Madison*? • How does judicial review apply to federal law?	**CML** pages 5–21 (*Marbury v. Madison*)

12 July 2023

Lesson 9 12 Jul 23 8:45-9:40	**Article III: The Federal Courts & Judicial Review of State Actions** • How does judicial review apply to state actions?	**CML** pages 21-31 (*Cooper v. Aaron*)

LESSON	TOPIC	READINGS
MAJ McGuiness	• How did the Supreme Court apply the doctrine of judicial review to state action in *Cooper v. Aaron*?	

12 July 2023

Lesson 10 12 Jul 23 9:50-10:45 LTC Chiaramonte	**OPTIONAL:** **Power Hour: One-Hour Review**	Review material from Lessons 1 to 9
12 Jul 23 10:45-11:40 **MAJ Wright*** **LTC Jones** **LTC Chiaramonte**	**WPR 1**	Lessons 1 to 9

PART II
CONSTITUTIONAL RIGHTS

13 July 2023

Lesson 10:45 13 Jul 23 8:45-9:40 MAJ McGuiness	**Free Speech: The Bounds of Expression** • What standards of review (levels of scrutiny) apply when determining the constitutionality of laws? • How does the First Amendment protect freedom of expression? • What is the difference between content-based and content neutral speech restrictions?	**CML** pages 219–236 (*Ward v. Rock Against Racism*); 237–242 (*Brandenburg v. Ohio*); 243-253 (*Texas v. Johnson*)
9:40-10:45	**BREAK**	
Lesson 12 13 Jul 23 10:45-11:40 LTC Jones	**Expression & the Military** • How does the right to freedom of expression differ for members of the military? • Why is the right to freedom of expression different for members of the military? Is this difference justifiable?	**Canvas reading for Lesson 12:** (*Parker v. Levy*; *U.S. v. Meakin*)

14 July 2023

Lesson 13 14 Jul 23 8:45-9:40 LTC Jones	**Religion & the Establishment Clause** • How does the First Amendment protect freedom of religion? • What is the Establishment Clause, and what does it require?	**Canvas reading for Lesson 13** (*Santa Fe Ind. Sch. Dist. v. Doe; Kennedy v. Bremerton School District*)

LESSON	TOPIC	READINGS
	• How do courts determine whether a policy is constitutional under the Establishment Clause?	
9:40-10:45	**BREAK**	
Lesson 14 14 Jul 23 10:45-11:40 LTC Stigall	**Religion & the Free Exercise Clause** • How does the First Amendment protect freedom of religion? • What is the Free Exercise Clause, and what does it require? • How do courts determine whether a policy is constitutional under the Free Exercise Clause?	**CML** pages 285–304 (*Employment Division v. Smith*); 305–314 (*Church of the Lukumi v. Hialeah*)
15 July 2023		
Lesson 15 15 Jul 23 8:45-9:40 LTC Jones	**Religion & the Military** • How does the right to freedom of religion apply to members of the military?	**Canvas reading for Lesson 15:** (*Mellen v. Bunting*; *Katcoff v. Marsh*)
9:40-10:45	**BREAK**	
Lesson 16 15 Jul 23 10:45-11:40 MAJ Wright	**Equal Protection & Race I** • What is the Equal Protection Clause? • How is the Equal Protection Clause applied to issues of race?	**CML** pages 159-167 (*Scott v. Sandford*); 181-85 (*Plessy v. Ferguson*)
17 July 2023		
Lesson 17 17 Jul 23 8:45-9:40 LTC Stigall	**Equal Protection & Race II** • How has the Supreme Court's interpretation of the Equal Protection Clause evolved?	**CML** pages 187-194 (*Brown v. Board of Education*); 194-98 (*Loving v. Virginia*)
9:40-10:45	**BREAK**	
Lesson 18 17 Jul 23 10:45-11:40 LTC Jones	**Affirmative Action & Gender Discrimination** • Is affirmative action constitutional? • Are gender-based policies constitutional? • What standard of review do courts apply to race-based and gender-based policies?	**CML** pages 198-210 (*Grutter v. Bollinger*); pages 210:45-217 (*United States v. Virginia*)
18 July 2023		
Lesson 19 18 Jul 23 8:45-9:40 LTC Stigall	**2nd Amendment: Right to Bear Arms** • Is the right to keep and bear arms an individual right or a right inextricably tied to militia service? • What emphasis do the *Heller* and *Bruen* Courts place on self-defense? • On which test does the *Bruen* court rely in reaching its conclusion(s)?	**Canvas reading for Lesson 19** (*D.C. v. Heller*); (*New York State Rifle and Pistol Association v. Bruen*)

LESSON	TOPIC	READINGS
	• Does the *Bruen* court distinguish being within the home from outside the home when determining whether there is a constitutional right to bear arms?	
9:40-10:45	**BREAK**	
Lesson 20 18 Jul 23 10:45-11:40 LTC Jones	**Reproductive Rights** • How has the Court's view of abortion evolved over the last 50 years? • Is there a fundamental right to abortion? • What reasoning does the Court use to determine whether this right exists? • What standard of scrutiny did the Court apply to the Mississippi law at issue?	**CML** pages 137-140; **MS Canvas** readings for Lesson 21 (Excerpts *from Roe v. Wade & Planned Parenthood of Southeastern PA v. Casey*); (*Dobbs v. Jackson Women's Health*)

19 July 2023

Lesson 21 19 Jul 23 8:45-9:40	**READING PERIOD**	
Lesson 22 19 Jul 23 9:40-10:40 **LTC Chiaramonte**	**OPTIONAL:** **POWER HOUR: WPR REVIEW**	**Review Material from Lessons 10:45-21**
Lesson 22 **19 Jul 23** **10:45-11:40** **COL Downey** **LTC Jones***	**WPR 2**	**Lessons 10:45-21**

LESSON	TOPIC	READINGS

PART III

CONSTITUTIONAL RIGHTS & CRIMINAL PROCEDURE

20 July 2023

20 Jul 23	**Writing Assignment Distributed**	***Writing Assignment Due on 25 July 2023***
Lesson 23 20 Jul 23 8:45-9:40 COL Downey	**4th Amendment: Searches and Seizures** • What right does the 4th Amendment recognize? How has the Supreme Court sought to protect that right? • What is a "reasonable expectation of privacy," and why is it significant? • What is a warrant, and when is a warrant required?	**CML** pages 315-325 (*Katz v. United States)*; **Canvas reading for Lesson 23** (*Thompson v. Louisiana*)
	BREAK	
Lesson 24 20 Jul 23 10:45-11:40 COL Downey	**4th Amendment: Warrantless Searches** • What is a warrantless search? • Are warrantless searches constitutional? • What are the exceptions to the warrant requirement, and what rationales underlie these exceptions?	**Canvas reading for Lesson 24** (*Maryland v. Dyson*; *Riley v. California*); skim *Carpenter v. United States*

21 July 2023

Lesson 25 21 Jul 23 8:45-9:40 COL Downey	**4th Amendment & the Military** • How does the application of the 4th Amendment differ in the military? • What is the difference between a search and an inspection in the military?	**CML** pages 403-413 (*U.S. v. Larson*; 415-427 (*U.S. v. Campbell*); **Canvas reading for Lesson 25** (*U.S. v. Huntzinger*)
	BREAK	
Lesson 26 21 Jul 23 10:45-11:40 MAJ Wright	**5th Amendment: Self-Incrimination** • What right does the 5th Amendment recognize? • How has the Supreme Court sought to protect that right? • What is "custodial interrogation" and why is it significant?	**Canvas Reading for Lesson 26** (*Stansbury v. California*; *Rhode Island v. Innis*)

22 July 2023

Lesson 27 22 Jul 23 8:45-9:40 LTC Jones	**5th Amendment in the Military** • How does the application of the 5th Amendment differ in the military?	**CML** 393-402 (*U.S. v. Ramos)*; **Canvas Reading for Lesson 27** (*U.S. v. Swift*)
	BREAK	

LESSON	TOPIC	READINGS
Lesson 28 22 Jul 23 10:45-11:40 MAJ Wright	**Administrative Due Process** • What is administrative due process? • When might a commander choose to impose administrative disciplinary measures? • What are a commander's options for imposing administrative disciplinary measures?	**CML** pages 369-379; **Canvas reading for Lesson 28** (Administrative Due Process; *U.S. v. McAllister*)

24 July 2023

Lesson 29 24 Jul 23 8:45-9:40 LTC Jones	**Non-Judicial Punishment & Courts-Martial** • What is non-judicial punishment (NJP)? • When might a commander choose to impose NJP? • What is a court-martial? • When might a commander choose to recommend trial by court-martial? • What does the typical court-martial process look like, and who is responsible for making decisions along the way?	**CML** pages 381-392; 331-349
	BREAK	
Lesson 30 24 Jul 23 10:45-11:40 COL Downey	**Unlawful Command Influence** • What is unlawful command influence (UCI)? How can UCI affect the prosecution of a case before a court-martial?	**CML** pages 351-364 (*U.S. v. Boyce*); **Canvas reading for Lesson 30** (*U.S. v. Gerlich*)

PART IV
MILITARY LAW & THE LAW OF ARMED CONFLICT

25 July 2023

Lesson 31 25 Jul 23 8:45-9:40 MAJ McGuiness	***Jus ad Bellum*** • What is the *jus ad bellum*? • How is the use of force by States regulated under international law?	**Canvas reading for Lesson 32** pages 3–9 of Corn Article; U.N. Charter;
	BREAK	
Lesson 32 25 Jul 23 10:45-11:40 MAJ McGuiness	**Conflict Classification** • How are conflicts classified under LOAC? • What is an "international armed conflict" (IAC)? What rules apply during an IAC? • What is a "non-international armed conflict" (NIAC)? What rules apply during a NIAC?	**Canvas reading for Lesson 33** pages 42–62 (skim) and pages 159–65 of **Solis**; read Common Article 2 and Common Article 3
Lesson 33 25 Jul 23	**Writing Assignment Due NLT 1700**	

LESSON	TOPIC	READINGS
26 July 2023		
Lesson 34 26 Jul 23 8:45-9:40 MAJ McGuiness	**Law of Armed Conflict: Individual Status of Personnel** • How do IAC and NIAC rules differ regarding personnel? • What is the difference between a combatant and a non-combatant and a civilian? • How are combatants, non-combatants, and civilians distinguished in armed conflict? • Who is entitled to prisoner of war (POW) status under LOAC?	**Canvas reading for Lesson 34, Solis** pages 201–16
	BREAK	
Lesson 35 26 Jul 23 10:45-11:40 MAJ McGuiness	**Principles of the Law of Armed Conflict** • What are the principles of LOAC? • How do these principles apply in armed conflict?	**Canvas reading for Lesson 35, Solis** pages 268–305
27 July 23		
Lesson 36 27 Jul 23 8:45-9:40 ALL Profs	**Principles of the Law of Armed Conflict: Scenarios**	Review Lesson 35
	BREAK	
Lesson 37 27 Jul 23 10:45-11:40 COL Downey	**Rules of Engagement** • What are "Rules of Engagement" (ROE)? • What considerations influence the creation of the ROE? • What purpose does the ROE serve?	**Canvas reading for Lesson 37, Solis** pages 476–98
28 July 23		
Lesson 38 28 Jul 23 8:45-9:40 MAJ Wright	**Command Responsibility & Obedience to Orders** • What is command responsibility? • What is the doctrine of *respondeat superior*? • When is a commander responsible for LOAC violations under the doctrine of command responsibility? • Are servicemembers required to obey all superior orders? • What should a servicemember do if given an illegal order?	**Canvas reading for Lesson 38, Solis** pages 390–403, 418–33

LESSON	TOPIC	READINGS
Lesson 39 28 Jul 23 9:50-10:45 MAJ Wright	**War Crimes** • What is a war crime?	**Canvas reading for Lesson 39, Solis** pages 328–35, 343–62
28 Jul 23 10:55-11:40 MAJ Wright	**TEE REVIEW**	**Review Lessons 1-39**

29 July 23

Lesson 40 8:45-11:40 29 Jul 23 LTC Jones*	**TEE**	

LW403: Constitutional and Military Law



Course Administrative Memorandum
&
Syllabus

STAP 3 2024





MADN-LAW 30 May 2024

MEMORANDUM FOR Cadets Enrolled in LW 403, Constitutional and Military Law
SUBJECT: LW 403 (STAP 3) Course Administrative Memorandum and Syllabus

1. Overview of LW 403. Law has been taught to Cadets at the United States Military Academy since 1821. As a soon-to-be officer who will swear an oath to support and defend the Constitution of the United States, this course is a critical component of your understanding and appreciation of the role of the rule of law in our society and to you as a leader in our Army. This course will improve your understanding of the law, your ability to think critically through legal analysis, and your ability to articulate your analysis concisely. This course supports character development. You will learn how the rule of law has been used—and abused. In some instances, you will learn how individuals and institutions have failed to uphold the law. In more instances, you will find examples of individuals demonstrating character in their use of the law: whether to fight racial discrimination, hold individuals accountable for war crimes, or support a defendant's right to a fair trial.

a. Course Objectives.

(1) *Educate Cadets on the basic principles of constitutional law*. The Constitution is the world's oldest existing written charter of government, and it serves as the foundation for our nation's laws and system of government. Every commissioned officer swears an oath to support and defend the Constitution; accordingly, every officer should be familiar with the rights it guarantees, the structure of government it creates, and how the Supreme Court of the United States (SCOTUS) has interpreted the Constitution when evaluating the actions of the executive and legislative branches.

(2) *Educate Cadets on the basic principles of criminal law and the military justice system.* As a commissioned officer, you will make legal decisions and exercise law enforcement powers in ways that affect Soldiers. The course will introduce you to the basic tenets of criminal law and the basic rules and procedures of the military justice system as defined by the Uniform Code of Military Justice (UCMJ).

(3) *Educate Cadets on the Fundamental Principles of International Law and the Law of Armed Conflict (LOAC).* As a member of the armed forces of the United States of America, you are legally obligated to abide by the laws of armed conflict. This course will educate you on the basic tenets of international law, specifically focusing on the LOAC. As a future leader in our Army, you must understand the legal principles of the LOAC and be able to apply them in combat.

(4) *Develop Cadets' Ability to Think Critically, Analyze Legal Issues, and Effectively Communicate Persuasive Legal Analysis.* This course will educate you on legal reasoning and analysis and the framework lawyers apply to analyze fact patterns to develop legal conclusions. This will require you to think critically. You will learn to use this framework for a legal issue to develop answers to legal questions. To succeed in this course, you must learn to express your thoughts logically, clearly, and concisely, whether verbally or in writing. This course will

develop those skills, directly improving your problem-solving abilities. Finally, this course serves as a "Writing in the Profession (WiP)" requirement for the West Point Writing Program (WPWP). You will be evaluated on your abilities to provide a written legal analysis of a practical scenario.

(b) Lessons. The course syllabus below describes the subject of each lesson. This course is divided into four parts with thirty-five substantive lessons total. The syllabus further outlines the framework of the course, which builds progressively on concepts and ideas presented throughout the course.

(1) The first part of the course, ***The American Constitutional System***, consists of nine lessons. This is the foundation of the course, establishing the basic principles of legal reasoning and analysis in how the Supreme Court of the United States interprets the Constitution.

PART I: THE AMERICAN CONSTITUTIONAL SYSTEM	
Lesson 1 8 July 0800	**Law, the Constitution, and the Courts**
Lesson 2 8 July 0910	**Introduction to Legal Reasoning and Analysis**
Lesson 3 8 July 1020	**Judicial Review and Limits on Judicial Power**
Lesson 4 9 July 0800	**The Powers of Congress under the Commerce Clause**
Lesson 5 9 July 0910	**State-Federal Relations under the Constitution**
Lesson 6 9 July 1020	**The Powers of the President**
Lesson 7 10 July 0800	**Powers Shared Between Congress and the President**
Lesson 8 10 July 0910	**The Power to Commit the Nation to Armed Conflict**
Lesson 9 10 July 1020	**Military Authority over American Civilians**
Lesson 10 11 July 0800	**Optional Review for WPR 1**
11 July 0910	**WPR 1** **Legal Memorandum Distributed**

MADN-LAW
SUBJECT: LW 403 Course Administrative Memorandum and Syllabus

(2) The second part of the course, ***Military Law and Criminal Procedure***, consists of eleven lessons and will introduce you to basic principles of criminal law and procedure.

PART II: MILITARY LAW AND CRIMINAL PROCEDURE	
Lesson 11 12 July 0800	**Introduction to Criminal Law**
Lesson 12 12 July 0910	**The Uniform Code of Military Justice (UCMJ) & the Court-Martial System I**
Lesson 13 12 July 1020	**The UCMJ & the Court-Martial System II**
Lesson 14 15 July 0800	**Unlawful Command Influence**
Lesson 15 15 July 0910	**UCMJ Article 15: Non-Judicial Punishment**
Lesson 16 15 July 1020	**Administrative Corrective Measures**
Lesson 17 16 July 0800	**Class Drop:** ***Complete Online Quiz for Lessons 11-16***
Lesson 18 16 July 0910	**4th Amendment: Searches and Seizures**
Lesson 19 16 July 1020	**4th Amendment: Warrantless Searches**
Lesson 20 17 July 0800	**4th Amendment in the Military**
Lesson 21 17 July 0910	**5th Amendment: Self-Incrimination**
Lesson 22 17 July 1020	**5th Amendment in the Military**
Lesson 23	***Legal Memorandum Due 17 July***

(3) The third part of the course, the ***Law of Armed Conflict,*** consists of eight lessons and will introduce you to international law and the binding law that governs the use of force in initial operations. The Law of Armed Conflict (LOAC) is a historical and evolving body of law that governs how you will operate in combat. Understanding the importance of military necessity balanced against humanity will allow you to train your Soldiers to fight lawfully.

PART III: THE LAW OF ARMED CONFLICT	
Lesson 24 18 July 0800	**International Law and States' Resort to Military Force**
Lesson 25 18 July 0910	**Introduction to the Law of Armed Conflict (LOAC)**
Lesson 26 18 July 1020	**Law of Armed Conflict: Individual Status of Personnel**
Lesson 27 19 July 0800	**Principles of the Law of Armed Conflict**
Lesson 28 19 July 0910	**Principles of the Law of Armed Conflict: Scenarios**
Lesson 29 19 July 1020	**Rules of Engagement**
Lesson 30 22 July 0800	**Command Responsibility and Obedience to Orders**
Lesson 31 22 July 0910	**War Crimes**
Lesson 32 22 July 1020	**Optional Review for WPR 2**
23 July 0800	**WPR 2** ***Followed by a reading hour for Lesson 33***

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SUBJECT: LW 403 Course Administrative Memorandum and Syllabus

(4) The final part of this course is ***Constitutional Rights***. We end the course by returning to those rights you swear an oath to defend. Although not exhaustive, the seven lessons in this part of the course expose you to some of the fundamental rights that are imperative to citizens of the United States.

PART IV: CONSTITUTIONAL RIGHTS	
Lesson 33 23 July 1020	**Free Speech: The Bounds of Expression**
Lesson 34 24 July 0800	**Free Speech in the Military**
Lesson 35 24 July 0910	**Freedom of Religion I (Establishment Clause)**
Lesson 36 24 July 1020	**Freedom of Religion II (Free Exercise Clause)**
Lesson 37 25 July 0800	**Equal Protection of the Laws & Race-Based Classifications**
Lesson 38 25 July 0910	**Affirmative Action & Gender Discrimination**
Lesson 39 25 July 1020	**Current Topics: Reproductive Rights**
Lesson 40 25 July 1130-1225	***Optional* TEE Review**
26 July 0800-1100	**TEE (covering lessons 33-39)**

(5) Most of the lessons have readings that involve a court's written opinion on a case before it. These opinions help define and refine the meaning of the Constitution, the powers conferred to the three branches of our government, and the individual rights guaranteed to citizens. Accordingly, studying these opinions and the legal analysis supporting court decisions is one of the most effective ways to understand the law and our legal system. Additionally, as a commissioned officer, you will be expected to evaluate disparate facts and circumstances when making decisions that have legal consequences. Case studies will help prepare you to apply the law to facts.

c. Assessment (Grades). Your final grade will reflect your performance on five major graded events (two WPRs, a quiz, the writing assignment, and the TEE), as well as the quality of your class preparation and participation as determined by your professors. The WPRs and the TEE will consist of objective questions and essay or short answer questions that evaluate your ability to analyze and think critically about a legal question. The writing assignment will consist of a practical scenario assessing your ability to evaluate a legal problem, support your arguments by applying the law, and express yourself clearly in writing. The TEE will cover material addressed in Part IV of the course. Your professors will determine your class preparation grade based on several factors, including your class participation and contributions to in-class discussions. The points for your preparation and participation will be awarded at the end of the course.

d. How to Succeed in LW 403. Without question, completing the assigned readings is the most crucial factor in your course success. Class discussions, exams, and written assignments are based on the readings designated in the syllabus. Therefore, completing the reading assignments is **critical** to your success, as graded events are entirely based on the material contained in the readings for this semester. **Relying solely on previously prepared notes or outlines will not reflect the material presented in LW403 this semester. As discussed below, we are now using a new coursebook, and previous material prepared by other Cadets is likely inaccurate.** Abbreviated study aids simply cannot impart the nuanced insights you achieve when you wrestle with the ideas presented in the course documents.

2. Administrative Matters.

a. Course Materials.

(1) *New Coursebook.* This academic year, LW403 has a new textbook or, rather, a *coursebook*. The coursebook is based, in large part, on the substance covered in Academic Year 2023, but there are some significant differences—some lessons have been combined, some lessons have been dropped, and some new lessons have been added. Do not rely on old outlines for this course.

(2) *A Different Approach to Class Preparation and Teaching.* Unlike the past few years, where much of the reading consisted of entire court opinions with little to no explanation, this coursebook has more discussion and description for each lesson. Thus, the assigned reading for some lessons is longer than in the past. However, with some longer readings comes more explanation. This has two consequences: first, if you complete the assigned reading, you will be much better prepared for class and the assessments; second, your LW403 professors will **not** be able to explain all the assigned reading to you—there simply is not time in a 55-minute class. Thus, the better you prepare for class, the better prepared you will be for assessments; studying the assigned reading is the single best method for preparing for class.

b. Class Attendance and Additional Instruction (AI).

(1) LW 403 is a 3.0 credit course. Classes are fifty-five minutes long. You must attend class. If you are absent from class, you remain responsible for completing the assigned reading. If you have questions about the lesson(s) you missed, it is your responsibility to coordinate additional instruction (AI).

(2) Do not hesitate to coordinate AI with your professors. You are encouraged to seek

AI as often as you think necessary.

(3) *Class Drops*. Other than the scheduled drops for WPRs and the quiz, there are no additional class drops for LW403.

c. Classroom Standards and Electronics Policy.

(1) Cadets are expected to maintain a high and consistent level of discipline and professionalism in the classroom. To the extent possible, standards will comport with the Dean's policy memorandum dated 22 January 2020 (DPOM 02-03) and the Dean's AY24 Guidance, Enclosure 2 (Operational Guidance), dated 26 June 2023.

(2) Cadets will comply with the Dean's Memorandum on Section Marcher Responsibilities, dated 7 August 2022.

(3) Cell phones will not be used in the classroom.

d. Course Policy on Professor's Slides. It is LW403 course policy that professors may not distribute any slides prepared by the professor to Cadets. Slides are often incomplete explanations for concepts, and de-coupled from the in-class context provided by an LW403 professor, the slide may be misinterpreted, misapplied, or inappropriately distributed outside of the course.

Correspondingly, no Cadet may take photographs of any professor's slides. There are two exceptions: (1) slides that explain assessments will be distributed by the course director, through professors, to Cadets. (2) if the course director determines that there are slides that provide a useful explanation of a challenging concept, the course director may authorize their distribution to the entire course.

e. Graded Events.

(1) *General*. Your LW 403 grade will be calculated as follows:

Graded Event	**Points**	**Percentage of Course**
WPR 1	225 points	22.5%
Part II Block Quiz	100 points	10%
Written Legal Opinion	150 points	15%
WPR 2	225 points	22.5%
TEE	200 points	20%
Class Preparation & Participation	100 points	10%
Total	1,000 points	

(2) *WPRs*. Your professors cannot authorize you to miss a WPR. If you have an excused absence (i.e., trip section, placed on quarters by a medical professional) from the WPR, you must coordinate a make-up day and time with the course director or COL Downey. As a core course, a LW403 WPR has priority over corps squad activities, lectures, meetings, and other activities.

(a) Any missed WPR must be completed within two (2) days of the designated WPR.

(b) There are no make-ahead WPR sessions in LW403.

(c) **WPRs are closed-book examinations with no notes allowed**.

(3) *Part II Quiz*. This quiz will cover Lessons 11-16. You will complete this quiz online via the Canvas platform. You will have a class drop during Lesson 17. The quiz will be available online for you to take. Once you begin the quiz, you will have 55 minutes to complete it, and will only have one opportunity to take the quiz. Unless a Cadet has an excused absence approved by

the course director, failure to complete the Part II Quiz during the assigned time will result in a grade of zero (0) points on the quiz. You may use **only** your coursebook and your class notes to complete the quiz. You may not receive assistance from any person, including generative AI. You may not make any record of the quiz questions, whether through photographs, screen captures, or any other technique.

(4) *Written Legal Opinion*. You are required to submit a written legal opinion of 1,000 – 1,250 words in response to a provided scenario. The course director will distribute the instructions and background information electronically. You will receive further details with the actual assignment.

(a) This writing requirement is a designated Signature Writing Event (SWE) by the West Point Writing Program (WPWP) for Writing in the Profession (WiP). As a WiP course, LW403 prepares you to reason and communicate successfully as an Army officer. You will receive selective writing instruction that prepares you to complete this SWE, which the Department of Law will assess for evidence of your writing proficiency. *This assessment is separate from the grade you will receive on the assignment*. If you are marked as "Not Proficient," you may be directed to revise the assignment or to complete further development (potentially including WR200: Developmental & Professional Writing). More information is available at westpoint.edu/wpwp.

(b) The Mounger Writing Center (MWC), located on the second floor of Jefferson Hall, is a subcomponent of the West Point Writing Program. The MWC sponsors one-on-one consultations, group workshops, and other events to assist you with your writing. The MWC strongly prefers that you make an appointment. Cadets must cite any assistance received from the MWC in their final work in accordance with the Documentation and Acknowledgment of Academic Work (DAAW) policy, dated June 2023, as applicable.

(c) Late Submissions. The final grade for assignments submitted after the due date (i.e., the date and time designated for submission) will be reduced by 10% per day, every day, until the assignment is submitted. For example, if an assignment is due by 1700 on Monday and a cadet turns in the assignment at 1701 on Monday, the cadet's final grade will be reduced by 10% of the total available points. If the cadet turns in the assignment at 1701 the following Friday, the cadet's final grade will be reduced by 50% of the total available points. Assignments submitted four days or more after the due date will receive a grade of zero. Cadets submitting an assignment more than 48 hours late will receive a negative cadet observation report (NCOR) from their professor.

(d) LW403 Documentation Policy. The Honor Code and Honor System apply to all aspects of cadet life, including activities as a student and a scholar. Additionally, integrity, one of the seven Army Values, is fundamental to the Profession of Arms. Academic integrity obliges cadets to be professional, conscientious, and truthful in differentiating their work from that of others and crediting others for their work or ideas. A cadet's submission must clearly reflect his or

her own effort. **It is, therefore, the policy of the Department of Law that all graded submissions clearly indicate any assistance received in accordance with the DAAW policy, including proper citations to all sources used in the preparation of the product. The instructions for the writing assignment will provide detailed guidance on permissible assistance and proper citation format.**

(5) *Term End Exam (TEE)*. The TEE consists of a closed-book examination covering material from Part IV of the course (Lessons 33-39).

(6) *Class Preparation and Participation Grade*.

(a) Your professors will assess your class preparation and participation out of a total of one hundred (100) points.

(b) Your professors will consider a range of factors when determining your class preparation and participation grade. Your preparation for class and regular, substantive participation during class discussions will positively affect your grade. Other factors influencing your grade include your performance on case briefs, short written assignments, and quizzes. Your professors will provide additional guidance regarding how they intend to determine your class preparation grade.

f. Grading Scale.

(1) The grading scale is:

Letter Grade	Percentage of Points Earned
A+	97-100
A	93-96.99
A-	90-92.99
B+	87-89.99
B	83-86.99
B-	80-82.99
C+	77-79.99
C	73-76.99
C-	70-72.99
D	67-69.99
F	0-66.99

(2) **You must attain at least a grade of "D" (67.0% average) to pass LW 403.**

g. Grading Procedures and Policy. Cadets will use their assigned Cadet identification numbers when taking a WPR, quiz, completing their Legal Memorandum, or taking the TEE on paper. Canvas automatically anonymizes submissions. Professors will grade student's assessments using this anonymous method. Once an assessment has been graded and those grades are recorded, professors will provide those assessments for Cadets to review in class. The policy of LW403 is that Cadets may not maintain their graded WPRs. Cadets will receive written feedback from their professors and may keep that written feedback.

h. Re-grade Policy. Cadets must submit requests for re-grading an assignment in writing (email is acceptable) to the Course Director and COL Downey no later than **two calendar days after receiving notification of the grade.** The request must state clearly, with specificity, the reasons why a Cadet seeks a re-grade. The Head, Department of Law, will approve all requests

for re-grade. Submissions approved for reconsideration will be re-evaluated and re-graded as described below. Submissions disapproved for reconsideration will not be re-graded, and the original assignment grade will stand.

(1) If the Head, Department of Law, approves a request for a re-grade, two Department of Law faculty members will re-grade the assignment. The requesting cadet's identity will remain anonymous, and all information that could identify the requestor on the submission will be redacted or concealed prior to the faculty members' review.

(2) After reviewing the assignment, each professor will submit his or her grade to the LW403 Course Director. The adjusted grade will be the average of the two re-graders' recommended grades. The Course Director will adjust the requestor's assignment grade based on the input from the two re-graders. The assignment grade could either increase or decrease because of this process. The resulting grade, whether higher or lower, **will be final.**

3. Point of Contact. Please direct any questions concerning this memorandum first to any of your professors. I am available to answer any further concerns at margaret.kotlik@westpoint.edu.

MARGARET KOTLIK
Captain, U.S. Army
Course Director, Law 403

MADN-DLP 20 May 2025

MEMORANDUM FOR Cadets Enrolled in LW403, Constitutional and Military Law, Academic Term 25-5, Summer Term Academic Program (STAP)

SUBJECT: LW403 (Term 25-5) Course Administrative Memorandum and Syllabus

1. Overview of LW403. Law has been taught to Cadets at the United States Military Academy since 1821. As a soon-to-be officer who will swear an oath to support and defend the Constitution of the United States, this course is a critical component of your understanding and appreciation of the role of the rule of law in our society and to you as a leader in our Army. This course will improve your understanding of the law, your ability to think critically through legal analysis, and your ability to articulate your analysis concisely. This course supports character development. You will learn how the rule of law has been used—and abused. In some instances, you will learn how individuals and institutions have failed to uphold the law. In others, you will find examples of individuals demonstrating character in their use of the law: whether to fight racial discrimination, hold individuals accountable for war crimes, or support a defendant's right to a fair trial.

a. Course Objectives.

(1) *Cadets will understand the basic principles of constitutional law, including the rights guaranteed by the Constitution and how the Supreme Court interprets the Constitution in evaluating the actions of the executive and legislative branches.* The Constitution is one of the world's oldest existing written charters of government, and it serves as the foundation for our nation's laws and system of government. Every commissioned officer swears an oath to support and defend the Constitution; accordingly, every officer should be familiar with the rights it guarantees, the structure of government it creates, and how the Supreme Court of the United States (SCOTUS) has interpreted the Constitution.

(2) *Cadets will understand and differentiate the basic principles of criminal law and the military justice system.* As a commissioned officer, you will make legal decisions and exercise law enforcement powers in ways that affect Soldiers. This course will introduce you to the basic tenets of criminal law and the basic rules and procedures of the military justice system as defined by the Uniform Code of Military Justice (UCMJ).

(3) *Cadets will analyze and differentiate the fundamental principles of international law and the Law of Armed Conflict (LOAC).* As a member of the armed forces of the United States, you are legally obligated to abide by the LOAC. This course will educate you on the basic tenets of international law, specifically focusing on the LOAC. As a future leader in our Army, you must understand the legal principles of the LOAC and be able to apply them in combat.

(4) *Cadets will develop comprehensive written and oral legal analyses, succinctly summarize cases, analyze legal issues, and formulate sound legal conclusions, demonstrating critical thinking and clear communication skills.* This course will educate you on legal reasoning and analysis and the framework lawyers apply to analyze fact patterns to develop legal conclusions. This will require you to think critically. You will learn to apply this framework to a legal issue to develop answers to legal questions. You will also be evaluated on your abilities to provide a written legal analysis of a practical scenario. To succeed in this course, you must learn to express your thoughts logically, clearly, and concisely, whether verbally or in writing. This course will develop those skills, directly improving your problem-solving abilities.

b. Learning Management System. Canvas is the only learning management system used for this course. Students are responsible for regularly checking the course's Canvas page, including their Canvas email inbox, for course updates, assignments, and important announcements.

c. Lessons. The course syllabus below describes the subject of each lesson. This course is divided into four parts with thirty-five total substantive lessons. The syllabus further outlines the framework of the course, which builds progressively on concepts and ideas presented throughout the course.

(1) The first part of the course, *The American Constitutional System*, consists of nine lessons. This is the foundation of the course, establishing the basic principles of legal reasoning and analysis in how the Supreme Court of the United States interprets the Constitution.

PART I: THE AMERICAN CONSTITUTIONAL SYSTEM		PROFESSOR
	MONDAY, 7 JULY 2025	
Lesson 1 7 JUL 25 0800-0855	**Law, the Constitution, and the Courts**	**LTC Chiaramonte**
Break 0855-0910		
Lesson 2 7 JUL 25 0910-1005	**Introduction to Legal Reasoning and Analysis**	**LTC Song**
Break 1005-1020		
Lesson 3 7 JUL 25 1020-1115	**Judicial Review and Limits on Judicial Power**	**LTC Jones**
	TUESDAY, 8 JULY 2025	
Lesson 4 8 JUL 25 0800-0855	**The Powers of Congress Under the Commerce Clause**	**MAJ McGuiness**
Break 0855-0910		

Lesson 5 8 JUL 25 0910-1005	**State-Federal Relations Under the Constitution**	**LTC Song**
Break 1005-1020		
Lesson 6 8 JUL 25 1020-1115	**The Powers of the President**	**LTC Jones**
	WEDNESDAY, 9 JULY 2025	
Lesson 7 0800-0855	**Powers Shared Between Congress and the President**	**LTC Jones**
Break 0855-0910		
Lesson 8 0910-1005	**The Power to Commit the Nation to Armed Conflict**	**MAJ McGuiness**
Break 1005-1020		
Lesson 9 1020-1115	**Military Authority Over American Civilians**	**LTC Song**
	THURSDAY, 10 JULY 2025	
10 July 2025 0800-0855	**Optional Review for WPR 1**	**ALL**
BREAK 0855-0910		
Lesson 10 **10 JUL 25** **0910-1020**	**WPR 1 – *Administered During Class***	**ALL**

(2) The second part of the course is *Constitutional Rights*. Although not exhaustive, the seven lessons in this part of the course expose you to some of the fundamental rights that are imperative to citizens of the United States.

PART II: CONSTITUTIONAL RIGHTS		**PROFESSOR**
	FRIDAY, 11 JULY 2025	
Lesson 11 11 JUL 25 0800-0855	**Free Speech: The Bounds of Expression**	**MAJ McGuiness**

Break 0855-0910		
Lesson 12 11 JUL 25 0910-1005	**Free Speech in the Military**	**LTC Jones**
Break 1005-1020		
Lesson 13 11 JUL 25 1020-1115	**Freedom of Religion I (Establishment Clause)**	**LTC Song**
	MONDAY, 14 JULY 2025	
Lesson 14 14 JUL 25 0800-0855	**Freedom of Religion II (Free Exercise Clause)**	**LTC Jones**
Break 0855-0910		
Lesson 15 14 JUL 25 0910-1005	**Equal Protection of the Laws & Race-Based Classifications**	**LTC Song**
Break 1005-1020		
Lesson 16 14 JUL 25 1020-1115	**Affirmative Action & Gender Discrimination**	**COL Downey**
	TUESDAY, 15 JULY 2025	
Lesson 17 15 JUL 25 0800-0855	**Current Topics: Reproductive Rights**	**COL Downey**
BREAK 0855-0910		
Lesson 18 15 July 2025 0910-1005	**OPTIONAL REVIEW FOR WPR 2**	**ALL**
BREAK 1005-1020		
Lesson 19 15 July 2025 1020-1115	**WPR 2 – *Administered During Class***	**ALL**

(3) The third part of the course, *The Law of Armed Conflict*, consists of eight lessons and will introduce you to international law and the binding law that governs the use of force in military operations. The Law of Armed Conflict (LOAC) is a historical—and evolving—body of law that governs how you will operate in combat. Understanding the importance of military necessity balanced against humanity will allow you to train your Soldiers to fight lawfully.

MADN-DLP
SUBJECT: LW403 (Term 25-5) Course Administrative Memorandum and Syllabus

PART III: THE LAW OF ARMED CONFLICT		PROFESSOR
16 July 2025 – Legal Memorandum Requirement Assigned in Canvas		
	WEDNESDAY, 16 JULY 2025	
Lesson 20 16 JUL 25 0800-0855	**International Law and the Use of Force**	**MAJ McGuiness**
Break 0855-0910		
Lesson 21 16 JUL 25 0910-1005	**Law of Armed Conflict I: Introduction**	**LTC Stigall**
Break 1005-1020		
Lesson 22 16 JUL 25– 1020-1115	**Law of Armed Conflict II: Individual Status of Personnel**	**MAJ McGuiness**
	THURSDAY, 17 JULY 2025	
Lesson 23 17 JUL 25 0800-0855	**Law of Armed Conflict III: Principles**	**MAJ McGuiness**
Break 0855-0910		
Lesson 24 17 JUL 25 0910-1005	**Law of Armed Conflict IV: Scenarios I**	**ALL**
Break 1005-1020		
Lesson 25 17 JUL 25 1020-1115	**Principles of the Law of Armed Conflict: Scenarios II**	**ALL**
	FRIDAY, 18 JULY 2025	
18 JUL 25 0800-0855	**Class Drop** – ***Complete Quiz for Lessons 20-25 NLT 0900 on 18 July 2025***	**ALL**
Break 0855-0910		
Lesson 26 18 JUL 25 0910-1005	**Command Responsibility & Obedience to Orders**	**LTC Stigall**
Break 1005-1020		

Lesson 27 18 JUL 25 1020-1115	**War Crimes**	**LTC Stigall**
	LEGAL MEMORANDUM DUE NLT 1700 MONDAY, 21 JULY 2025	

(4) The final part of this course, *Military Law and Criminal Procedure*, consists of eleven lessons and will introduce you to basic principles of criminal law and procedure.

PART IV: MILITARY LAW AND CRIMINAL PROCEDURE		**PROFESSOR**
	MONDAY, 21 JULY 2025	
Lesson 28 21 JUL 25 0800-0855	**Introduction to Criminal Law**	**LTC Song**
Break 0855-0910		
Lesson 29 21 JUL 25 0910-1005	**The Uniform Code of Military Justice (UCMJ) & the Court-Martial System I**	**COL Downey**
Break 1005-1020		
Lesson 30 21 JUL 25 1020-1115	**The UCMJ & the Court-Martial System II**	**LTC Stigall**
	TUESDAY, 22 JULY 2025	
Lesson 31 22 JUL 25 0800-0855	**Unlawful Command Influence**	**COL Downey**
Break 0855-0910		
Lesson 33* 22 JUL 25 0910-1005	**UCMJ Article 15: Non-Judicial Punishment** ***(NOTE – the coursebook does not have a LSN 32)**	**LTC Jones**
Break 1005-1020		
Lesson 34 22 JUL 25 1020-1115	**Administrative Corrective Measures**	**LTC Stigall**
	WEDNESDAY, 23 JULY 2025	
Lesson 35 23 JUL 25 0800-0855	**4th Amendment: Searches and Seizures**	**LTC Song**

Break 0855-0910		
Lesson 36 23 JUL 25 0910-1005	**4th Amendment: Warrantless Searches**	**COL Downey**
Break 1005-1020		
Lesson 37 23 JUL 25 1020-1115	**4th Amendment and the Military**	**LTC Jones**
	THURSDAY, 24 JULY 2025	
Lesson 38 24 JUL 25 0800-0855	**5th Amendment: Self-Incrimination**	**MAJ McGuiness**
Break 0855-0910		
Lesson 39 24 JUL 25 0910-1005	**5th Amendment and the Military**	**COL Downey**
Break 1005-1020		
Lesson 40 24 JUL 25 1020-1115	**TEE Review**	**ALL**
	FRIDAY, 25 JULY 2025	
TEE 25 JUL 25 0800-1130	**TEE**	**ALL**

(5) Most of the lessons have readings that involve a court's written opinion on a case before it. These opinions help define and refine the meaning of the Constitution, the powers conferred to the three branches of our government, and the individual rights guaranteed to citizens. Accordingly, studying these opinions and the legal analysis supporting court decisions is one of the most effective ways to understand the law and our legal system. Additionally, as a commissioned officer, you will be expected to evaluate disparate facts and circumstances when making decisions that have legal consequences. Case studies will help prepare you to apply the law to facts.

d. Assessment (Grades). Your final grade will reflect your performance on five major graded events (two WPRs, the open-book quiz, the writing assignment, and the TEE) and the quality of your class preparation and participation as determined by your professors. The WPRs and the TEE will consist of objective questions and essay or short answer questions that evaluate your ability to analyze and think critically about a legal question. The quiz in Block III is a timed quiz (55 minutes) taken outside of class time, is open book/notes, and must be completed individually without collaboration. This quiz is designed to evaluate your understanding and

ability to read, comprehend, and apply the concepts covered in lessons 20-25 of Block III. The writing assignment will consist of a practical scenario assessing your ability to evaluate a legal problem, support your arguments by applying the law, and express yourself clearly in writing. The TEE **is not cumulative** and will only cover material addressed in Part IV of the course. Your professors will determine your class participation grade based on several factors, including but not limited to graded homework assignments, in-class exercises, and contributions to in-class discussions.

e. How to Succeed in LW403. Without question, completing the assigned readings is the most crucial factor in your course success. Class discussions, exams, and written assignments are based on the readings designated in the syllabus. Therefore, completing the reading assignments is **critical** to your success, as graded events are entirely based on the material contained in the readings for this semester. **Relying solely on previously prepared notes or outlines is not a substitute for reading. As discussed below, we are now using a newer coursebook, and previous material prepared by other Cadets is likely inaccurate.** Abbreviated study aids cannot impart the nuanced insights you achieve when you wrestle with the ideas presented in the course documents.

2. Administrative Matters.

a. Course Materials.

(1) *Coursebook.* The LW403 faculty drafted a new coursebook for AY 24. We have since revised last year's course, improving content and substance. Do not rely on old PDF coursebook copies or outlines for this course.

(2) *Class Preparation and Teaching.* Unlike the past few years, where much of the reading consisted of entire court opinions with little to no explanation, this coursebook has more discussion and description for each lesson. Thus, the assigned reading for some lessons is longer than in the past. However, with some longer readings comes more explanation. This has two consequences: first, if you complete the assigned reading, you will be much better prepared for class and the assessments; second, your LW403 professors will **not** be able to explain all the assigned reading to you—there simply is not enough time in a 55-minute class. Thus, the better you prepare for class, the better prepared you will be for assessments; studying the assigned reading is the best method for preparing for class.

b. Class Attendance and Additional Instruction (AI).

(1) LW403 is a 3.0 credit course. Classes are 55 minutes long. You must attend class. If you are absent from class, you remain responsible for completing the assigned reading. If you have questions about the lesson(s) you missed, you are responsible for coordinating additional instruction with your professors.

(2) Additional Instruction (AI). Do not hesitate to coordinate AI with your professors. You are encouraged to seek AI as often as you think necessary.

(3) *Class Drops*. Other than the scheduled drop for the Quiz in Block III, there are no additional class drops for LW403. You are welcome to take the Quiz during the scheduled class drop.

c. Classroom Standards and Electronics Policy.

(1) Cadets are expected to maintain a high and consistent level of discipline and professionalism in the classroom. Standards will comport with the Dean's policy memorandum dated 13 September 2023 (DPOM 02-03) and the Dean's AY25 Guidance, Enclosure 2 (Operational Guidance), dated 27 June 2024.

(2) Cadets will comply with the Dean's Memorandum on Section Marcher Responsibilities, dated 7 August 2022.

(3) **The use of cell phones and other electronic devices is not permitted in class, except for laptops and tables used for taking notes**.

d. Course Policy on Professor's Slides. It is LW403 course policy that professors will not distribute any slides prepared by the professor to Cadets. Slides are often incomplete explanations for concepts, and de-coupled from the in-class context provided by an LW403 professor, the slide may be misinterpreted, misapplied, or inappropriately distributed outside of the course. Correspondingly, **no Cadet may take photographs of any professor's slides**. There are two exceptions: (1) slides that explain assessments will be distributed by the course director, through professors, to Cadets. (2) if the course director determines that there are slides that provide a useful explanation of a challenging concept, the course director may authorize their distribution to the entire course.

e. Graded Events.

(1) *General*. Your LW403 grade will be calculated as follows:

Graded Event	**Points**	**Percentage of Course**
WPR 1	210 points	21%
WPR 2	160 points	16%
Quiz	100 points	10%
Written Legal Opinion	185 points	18.5%
TEE	245 points	24.5%
Class Preparation & Participation	100 points	10%
Total	1,000 points	

(2) *WPRs/Quiz*. WPR 1, covering Lessons 1-9, will be administered in class on 10 July 2025. WPR 2, covering Lessons 12-18, will be administered in class on 15 July 2025. For Block III, Cadets will complete an open-book, open-note quiz outside of class, available on Canvas. Once accessed, the quiz must be completed within 55 minutes and submitted by 0900 on 18 July

2025. Please ensure you have a stable internet connection and are prepared to complete the quiz within the allotted time frame.

(a) Absences. Your professor cannot authorize you to miss a WPR. If you have an excused absence (i.e., placed on quarters by a medical professional) from the WPR, you must coordinate a day and time with the Course Director to take the make-up WPR.

(b) Any missed WPR must be completed within 2 days of the designated WPR date.

(c) There are no make-ahead WPR sessions in LW403.

(d) **WPRs are closed-book examinations, and no notes are allowed**.

(3) *Written Legal Opinion*. In response to a scenario provided, you must submit a written legal opinion in memorandum format. The instructions and background information for the memorandum will be available via Canvas NLT 16 July 2025. The assignment is due on **21 July 2025, no later than 1700.** You will receive further details with the actual assignment.

(c) Late Submissions. The final grade for assignments submitted after the due date (i.e., the date and time designated for submission) will be reduced by 10% per day, every day, until the assignment is submitted. For example, if an assignment is due by 1700 on Tuesday and a cadet turns in the assignment at 1701 that Tuesday, the cadet's final grade will be reduced by 10% of the total available points. If the cadet turns in the assignment at 1701 the following Friday, the cadet's final grade will be reduced by 30% of the total available points. Assignments submitted seven days or more after the due date will receive a grade of zero. Cadets submitting an assignment more than 48 hours late will receive a negative cadet observation report (NCOR) from their professor. Cadets are encouraged to upload their completed assignments to Canvas as early as possible. Submissions delayed past the deadline by technical issues will be marked late.

(d) Multiple Submissions. Multiple submissions of any assignment are not permitted. In the event a cadet turns in an assignment multiple times, the first submission will be graded. Requests for exceptions to this policy must be submitted through your professor. The course director will consider and decide requests for exceptions on a case-by-case basis.

(e) LW403 Documentation Policy. The Honor Code and Honor System apply to all aspects of cadet life, including activities as a student and a scholar. Additionally, integrity, one of the seven Army Values, is fundamental to the Profession of Arms. Academic integrity obliges cadets to be professional, conscientious, and truthful in differentiating their work from that of others and crediting others for their work or ideas. A cadet's submission must clearly reflect his or her own effort. **It is, therefore, the policy of the Department of Law and Philosophy that all graded submissions clearly indicate any assistance received in accordance with the DAAW policy, including proper citations to all sources used in the preparation of the product**. The instructions for the writing assignment will provide detailed guidance on permissible assistance and proper citation format.

(f) Use of generative artificial intelligence (AI). Use of Generative Artificial Intelligence (AI) (such as Chat GPT) must be acknowledged according to the procedures laid out in the Dean's Documentation and Acknowledgement of Academic Work (DAAW) (specifically, Appendix E) to accurately reflect how you used Generative AI. Using content created by generative AI without proper attribution is considered plagiarism and may result in an honor violation. For the memorandum assignment, Cadets are expected to critically engage with the course material and present their own analysis and interpretation. **Therefore, the use of Generative AI tools for writing or developing arguments and analysis in this assignment is not permitted.** This assignment is designed to assess your ability to independently synthesize and articulate complex ideas, and the use of AI would compromise the development and evaluation of these skills. However, if you use Generative AI, you must explicitly indicate how you used AI in your writing process (i.e. grammar and/or formatting check) and provide the link to the AI generated web-string showing how you used it.

(4) *Term End Exam (TEE)*. The TEE consists of a closed-book examination covering material from Part IV of the course (Lessons 29-39). **The TEE will be administered in class on Friday, 25 July 2025 from 0800-1130**. Cadets must resolve conflicts with the date of the TEE through the Dean's office with the Operations and Registrar Division. The Department of Law and Philosophy cannot authorize you to take the TEE other than at the scheduled time.

(5) *Class Preparation*.

(a) *Quiz*. You must complete the quiz online via the Canvas platform. The quiz will be available on Canvas on Wednesday, 16 July 2025 at 1200 hours. The material covered in the Quiz will be from Lessons 20-25 in the Coursebook. **Once you begin the quiz, you will have 55 minutes to complete it and will only have one opportunity to take the quiz**. Unless a Cadet has an excused absence approved by the course director, failure to complete a quiz during the assigned time will result in a grade of zero (0) points on the quiz. You may use **only** your coursebook and your class notes to complete the quiz. You **may not receive assistance from any person or artificial intelligence.** You may not make any record of the quiz questions, whether through photographs, screen captures, or any other technique. You will receive further details on the quiz from your professors. The quiz is worth 100 points.

(6) *Class Participation Grade.*

(a) Your professors will evaluate your class participation throughout the course. A total of 100 points are allocated for participation during the semester.

(b) Your professors will consider various factors when determining your class participation grade. Your substantive participation during class discussions will positively affect your grade. Other factors influencing your grade may include your performance on case briefs, short written assignments, homework assignments, or other Kahoots/quizzes. Your professors will provide additional guidance regarding how they intend to determine your class preparation grade.

f. Grading Scale.

(1) The grading scale is:

Letter Grade	Percentage of Points Earned
A+	97-100
A	93-96.99
A-	90-92.99
B+	87-89.99
B	83-86.99
B-	80-82.99
C+	77-79.99
C	73-76.99
C-	70-72.99
D	67-69.99
F	0-66.99

(2) **You must attain at least a grade of "D" (67.0% average) to pass LW403.**

g. Grading Procedures and Policy. Cadets will use their assigned Cadet identification numbers instead of their names when handwriting an exam or completing their legal memorandum. Professors will use Canvas's anonymous grading tool for all other major graded events to grade their students' assessments. Once an assessment is graded and those grades are recorded, Cadets will be able to review their professors' feedback through Canvas. Cadets may arrange AI to review their full WPR.

h. Re-grade Policy. Cadets should first attempt to resolve any questions concerning their grades with their professor. If such an attempt does not resolve the dispute, Cadets must submit requests for re-grading an assignment in writing (email is acceptable) to the Course Director no later than **three calendar days after receiving notification of the grade.** The request must state clearly, specifically, the reasons why a Cadet seeks a re-grade. The Head, Department of Law and Philosophy, will review all requests for re-grade. Submissions approved for reconsideration will be re-evaluated and re-graded as described below. Submissions disapproved for reconsideration will not be re-graded, and the original assignment grade will stand.

(1) If the Head, Department of Law and Philosophy, approves a request for a re-grade, two independent LW403 faculty members will re-grade the entire assignment. The requesting cadet's identity will remain anonymous, and all information that could identify the requestor on the submission will be redacted or concealed prior to the faculty members' review.

(2) After reviewing the assignment, each professor will submit their grade to the LW403 Course Director. The adjusted grade will be the average of the two re-graders' recommended grades. Please note that this process could increase or decrease the assignment grade. The resulting grade, whether higher or lower, **will be final.**

MADN-DLP
SUBJECT: LW403 (Term 25-5) Course Administrative Memorandum and Syllabus

3. **Point of Contact.** Please direct any questions concerning this memorandum first to your LW403 professors. I am available to answer any further concerns at julie.downey@westpoint.edu.

Julie N. Downey
JULIE N. DOWNEY
COL, JA
Course Director, Law 403 (2025-5)

Nomination Material for
DANIEL F. RENDLEMAN

Prepared Statement of Daniel F. Rendleman
Nominee to be a Judge of the United States Court of Appeals for Veterans Claims
September 23, 2026

Good afternoon Chairman Moran, Ranking Member Blumenthal, and distinguished members of the Committee.

It is my great honor to come before you as a nominee for the United States Court of Appeals for Veterans Claims. For that I am grateful, grateful to the President for nominating me, and grateful to this Committee for inviting me here today.

In truth, if I were to review my life and career thus far, gratitude is perhaps the only appropriate attitude for me to adopt. I was raised in the cradle of the Prairie State where my loving mother and father not only bestowed upon me the blessings of American liberty but taught me to appreciate the causes of that bounty. I learned early on the debt that I owed—to the American servicemember who, in every generation, has fought and bled that such freedom may long endure; to the statesmen and patriots who, when the struggle for independence was won, carefully crafted our government's founding document, that sole source and guaranty of national freedom; to the countless American citizens who have added their voice and the work of their hands to the improvement of our Republic, and, of course, to that Providence which once transplanted upon these shores the seed of limited government and, to this day, sustains it.

A proper appreciation for the unearned blessings of my American birth led me to the United States Army, and that decision has determined my professional life ever since. I commissioned as an Army Aviator, learned tolerably well how to handle the AH-64 Apache helicopter, and deployed to combat in Afghanistan with the 1-101st "Expect No Mercy" Battalion where my duty, ultimately, was the protection and success of the American soldier.

The Army sent me to law school and my office changed from a cockpit to a courtroom, but that guiding principle never changed. Whether serving as a prosecutor, or advising a commander, or defending a soldier at court-martial, the welfare of the American soldier and the success of our arms has been at the forefront of my efforts.

A judge's responsibility to a party come into his court is quite different than that of a pilot providing air support. The veteran is ultimately best served by a judge who examines each case in turn, objectively, without bias, and faithfully applies the law, as promulgated by the political branches, to the facts. If confirmed, I commit to doing just that.

I would be remiss if I did not mention here one remaining cause of my gratitude. Katherine Rendleman, my wife, has spent the last eighteen years supporting this particular service member, upending her world to move almost a dozen times, and raising our six children—who have never known any but an Army life. She, like so many others in her shoes, deserves the love and thanks of man and woman. And she has mine.

I would be more than happy to answer what questions you may have.

Pre-Hearing Questions for Daniel Rendleman
Nominee to be a Judge of the
United States Court of Appeals for Veterans Claims
From Senator Jerry Moran
Chairman, Senate Committee on Veterans' Affairs

August 31, 2026

1. Please detail the professional and personal experiences that you believe prepared you to serve as a Judge of the United States Court of Appeals for Veterans Claims (CAVC).

Response: My professional life has, thus far, been dedicated to the care of American servicemembers and to the rule of law. Army Aviation has a motto: "Above the Best." And Army aviators live and die by that motto. I learned early on that I went on my mission to ensure that the men and women on the ground, the best, can complete theirs and come home safely. But mere enthusiasm was not enough. It took skill, level-headed reasoning, and courage when courage is called for, to do that job right.

Since my transition into the JAG Corps, I have learned how to put that dedication, skill, reasoning and, at times, courage, to the service of a legal system that seeks to hold Soldiers accountable while protecting both their individual rights and the ability of our warfighting units to complete their vital mission. I have served in positions prosecuting, defending, and advising commanders about those cases, giving me a view of the system from every angle. These experiences have given me the legal tools to operate effectively as a judge on this court, but perhaps more importantly, have given me the mindset and the personal experience needed to uphold a system that seeks to make good on America's promises to her veterans while remaining fair and impartial.

2. What is the appropriate role of CAVC in making certain that the Department of Veterans Affairs (VA) provides veterans, caregivers, survivors, and other claimants the benefits and services Congress has authorized, while remaining an impartial appellate court rather than a policymaking body?

Response: The appropriate role for CAVC is one that exists within a larger structure. A judge sitting on CAVC needs to understand that he is not there to design a veterans benefits system or to impose his own favored policies on the VA or anyone else. Rather, the role of CAVC is to weigh, impartially, the legal arguments on each side of a case and then to apply the regulations and laws that have already been imposed by the politically elected branches and the Constitution of the United States. Partially, this is accomplished by staying true to the court's mandate as laid out in Title 38, chapter 72 of the US Code. For example, section 7261 forbids the court from conducting de novo review on findings of fact made by the Secretary. Ultimately, the Judge must have the humility to understand the limitations of his position, but then the unflinching resolve to carry out his proper role with absolute impartiality and fairness.

3. Please describe your understanding of the purpose, jurisdiction, statutory responsibilities, and organizational structure of CAVC, including the Court's place between the Board of

Veterans' Appeals and the United States Court of Appeals for the Federal Circuit. If confirmed, how would you contribute to the effective administration of the Court?

Response: The Court of Appeals for Veterans Claims is an Article I court established by Congress with exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. Its own decisions in turn are subject to review by the Federal Circuit and, ultimately, the Supreme Court of the United States. It serves to provide impartial and independent judicial review of VA decisions. If confirmed, my primary contribution to the court would be to decide the cases before me fairly and expeditiously, in a manner consistent with controlling law.

4. What do you see as the role of this Committee, specifically, and congressional oversight, in general, with respect to CAVC?

Response: Congressional oversight is important in all areas of republican government. This Committee is exercising one of its most vital oversight roles in relation to this court right now: by vetting the qualifications of judicial nominees. In addition to monitoring of the court's budget and operations, this Committee gathers information and makes recommendations to the rest of the Senate on how previous reforms have been implemented and what future reforms would be beneficial. If confirmed, I hope to be an active member of this partnership and would look forward to working with the esteemed members of this Committee as appropriate for the duration of my term.

5. If the Secretary of Veterans Affairs, the White House, the Office of Management and Budget, the Office of Personnel Management, or any other official or private entity contacted you about a pending case, sought a commitment about how you would decide a case or category of cases, or issued a directive that you believed violated the law or threatened the Court's decisional independence, what would you do?

Response: I am dedicated to the impartial administration of the law. Under no circumstances would I provide a commitment to any person or party regarding how I may decide a case. Any communications mentioned here would become a part of the judicial record as appropriate. I would consult with the relevant ethics officials and, on a case-by-case basis, make whatever disclosures would be appropriate under the circumstances.

6. How has your background equipped you to serve in this role as a judge on the United States Court of Appeals for Veterans Claims?

Response: My background has equipped me with the skills, temperament, and dedication required to do this job well. My childhood in rural Southern Illinois taught me gratitude—both for the freedom I have enjoyed as a citizen of a republic and for the sacrifices that have been made to maintain that freedom. My service as an Army Aviator with the 101st Airborne Division (Air Assault) instilled within me a dedication to the protection of the American soldier and to the vital importance of completing the mission. As a lawyer, I worked to uphold the law as a trial counsel for America's I Corps at Fort Lewis, Washington. In later assignments, I approached the legal system from the command's perspective as a legal advisor for the 12th Combat Aviation Brigade and United States Army Garrison – Ansbach in Germany and for the United States

Military Academy at West Point. At Fort Campbell, as the Senior Defense Counsel for the Army's Trial Defense Service field office there, I gained invaluable experience and insight in the defense of individual Soldiers trying to navigate a complicated legal system on which so much of their freedom and livelihood depended. I believe that each of these experiences will prove useful in my service as a judge if confirmed.

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: I would first look to the text of the relevant statute or regulation in question, as informed by the structure of the document and the historical context in which it was promulgated. The goal of this analysis would be to understand the objective, original public meaning of the words I was called upon to apply. I would be careful to look for the meaning of the words as they would be understood by the common public and not to impose my own preferred meaning if the two should be incongruent. As appropriate, I would also consider persuasive authority from other courts or other bodies that had considered this question, showing decent respect to such opinions without surrendering the judicial responsibility of saying what the law is.

8. At any point during the process that led to your nomination, did you make any representation or commitment to anyone, including officials at the White House, VA, the Department of Justice, or any outside organization, as to how you would handle a particular case, legal issue, or category of claims if confirmed? Were you asked for your views on any pending or recently decided veterans law matter? If so, please explain fully.

Response: At no point during the process that led to my nomination did I make any such representation or commitment. I was not asked for my views on any pending or recently decided veterans law matter.

9. How would you describe your judicial philosophy? When interpreting law and regulation, what roles should be played by statutory or regulatory text, structure, context, ordinary meaning, related provisions, precedent, history, statutory purpose, and legislative history?

Response: My judicial philosophy is downstream of my philosophy of government. When the elected branches of our government pass a law or promulgate a regulation, they take a discrete act and create text with a particular meaning. This meaning is fixed in time. The effective words can be changed through further acts of the elected branches or by an amendment to the Constitution. However, if they are not so changed, it is not the judge's responsibility or prerogative to do so. The judge must seek to impartially apply the fixed meaning of those words to the case at hand.

Text, structure, context (including related provisions), and history are all invaluable tools to the judge as he seeks to understand and apply the ordinary public meaning of the rule or regulation in question. Statutory purpose and legislative history can, at times, shed light on the meaning of

a text, however, the subjective intent of a text's drafters does not take precedence over the meaning of the words themselves. The houses of Congress vote on and the President signs a bill's text, not the intent of any one legislator or any group of legislators. A judge within our system is bound by controlling precedent and is not at liberty to ignore it regardless of his own opinion on the rightness of the decision.

10. Judges must decide cases based on the law and the record rather than their preferred policy outcomes. How would you separate any policy views, prior advocacy positions, or views developed in government or private practice from your responsibilities as a Judge?

Response: A judge's role is not to create or impose his own policy decisions on the elected branches of our government. If confirmed, I will be bound to apply the laws and regulations as they have been promulgated by those entrusted by our republic to do so. If I have any personal policy views or advocacy positions, I am free to make those known at the ballot box alongside my fellow citizens. If I had a desire to create policy, I could stand for election rather than accept this nomination. Instead, I am now seeking to serve as a judge. My commitment is to serve in that role as an impartial adjudicator, not as an advocate for particular policy preferences.

11. What qualities of judicial temperament do you believe are essential for service on CAVC?

Response: Partiality and the appearance of partiality are both fatal to any court. A good judge must seek the truth above all else. In so doing, he must be truly impartial regarding each person who comes before him but he must also govern his conduct in such a way that no reasonable party or outside observer will be tempted to believe otherwise. It is easy, when a decision does not go your way, to blame the referee. This attitude is especially enticing when the decision was of grave importance. CAVC deals with decisions that are of utmost importance every day. A judge's patience, humility, and integrity can go a long way to convincing even the losing party that they had a fair day in court in front of an unbiased arbiter.

12. If confirmed, what steps would you take as an individual Judge and as a member of the Court to improve timeliness without sacrificing careful review, due process, or decision quality?

Response: It is difficult from my perspective currently outside the court to identify specific policies or procedures that would improve timeliness. A proper respect for the men and women currently working at the court and a fair dose of humility lead me to refrain from making such judgments until I have had a chance to see the inner workings for myself. That said, I have, in the past, had the honor of taking over offices where efficiency was important but lacking. I intend, if confirmed, to bring the benefit of that experience to my chambers with an eye towards improving whatever processes and procedures can be updated in a way that increases the swiftness of the court's work without loss of quality. I, personally, will bring my energy and industry to the court, ready to approach the work before it with enthusiasm. I look forward to working with colleagues on the bench and my fellow nominees in the continual process of evaluation and self-improvement that any institution must undertake.

13. In Ingram v. Collins, 38 Vet. App. 130, CAVC held that, when the applicable diagnostic code and related rating provisions do not refer to medication, the Board must discount the ameliorative effects of medication when assigning a disability evaluation. On February 17, 2026, VA issued an interim final rule amending 38 C.F.R. 4.10 in response to Ingram. VA rescinded that rule ten days later, restored the prior regulatory text, and the Federal Circuit appeal was dismissed by agreement on March 30, 2026. Do you understand Ingram to remain binding CAVC precedent, and can you describe its holding?

Response: Like other panel decisions of the court, Ingram v. Collins creates binding precedential value unless its holding is overturned by either this court, a superior court, or, where applicable, a change in law or regulation. The holding in that case was that in the evaluation of musculoskeletal disabilities where the relevant diagnostic code does not reference medication as a factor in evaluation, the Board should base its evaluation on the veteran's baseline level of functioning without the use of medication.

14. In Bufkin v. Collins, 604 U.S. 369, the Supreme Court held that the standard of review applicable to a challenge involving the benefit-of-the-doubt rule depends on whether the asserted error is legal or factual, and that VA's determination whether evidence is in approximate balance is predominantly factual and reviewed only for clear error. Is Bufkin binding precedent, and can you describe its holding?

Response: Like other Supreme Court decisions, Bufkin v. Collins creates binding precedential value unless its holding is overturned by the Supreme Court or, where applicable, a change in law or regulation. The central holding in that case was that CAVC reviews the VA's conclusions of law de novo but its findings of fact for clear error. Further, that the VA's determination that the evidence on a particular material issue is not in approximate balance under the benefit-of-the-doubt rule is primarily a factual determination subject to clear error review.

15. The Court may consider petitions for extraordinary relief alleging that VA has unlawfully withheld or unreasonably delayed action. Please describe the legal standards governing mandamus, unreasonable delay claims, and enforcement of the Court's mandates. How would you preserve the extraordinary nature of mandamus while making certain that meaningful and effective relief are available when ordinary appellate review is inadequate?

Response: Mandamus is appropriate when a petitioner has no other adequate means to attain the desired relief, when the petitioner has demonstrated a clear and indisputable right to the issuance of the writ, and when the court is satisfied that the issuance of the writ is appropriate under the circumstances. Cheney v. U.S. Dist. Ct. for D.C., 542 U.S. 367, 381 (2004).

For unreasonable delay claims, CAVC evaluates the case on the TRAC factors from Telecomms. Research & Action Ctr. v. FCC ("TRAC"), 750 F.2d 70, 76 (D.C. Cir. 1984). Those factors are: 1) whether the time for making decisions was governed by the rule of reason; 2) whether a statutory scheme supplied content for that rule of reason; 3) whether human health and welfare was at stake; 4) the effect of expediting delayed action on agency activities of a higher or

competing priority; 5) the nature and extent of interests prejudiced by the delay; and 6) that the court need not find any impropriety to hold that agency action was unreasonably delayed.

In addition to mandamus proceedings, the court may hold a party in civil contempt when 1) there exists a clear and unambiguous order; 2) there is clear and convincing proof that the order was not obeyed; and 3) the relevant party was not reasonably diligent or energetic in attempting to accomplish his duty relevant to the order. Groves v. McDonald, 27 Vet. App. 168, 173 (2014).

Remand from CAVC confers on the veteran the right to compliance with the order and imposes a duty upon the VA to ensure substantial compliance with the terms of the remand. Stegall v. West, 11 Vet. App. 269 (1998).

It is my belief that these standards are strict enough that, when properly applied, they allow a petitioner to receive relief in the extraordinary circumstances contemplated while preventing a general reliance on mandamus or contempt as commonplace tools for litigation. Without committing to any particular outcome in a given case, I would seek to follow these standards in deciding requests for extraordinary relief.

16. Please describe with particularity the process by which these questions were answered.

Response: I received these questions from the Committee through Office of Legal Policy at the United States Department of Justice. I personally researched and wrote answers to these questions. After receiving limited feedback from the Office of Legal Policy, I finalized the answers and authorized their return to the Committee.

17. Do these answers reflect your true and personal views?

Response: They do.

Pre-Hearing Questions for the Record
Nomination Hearing of Daniel Rendleman
Judge for the U.S. Court of Appeals for Veterans Claims
From Ranking Member Richard Blumenthal

1) Describe your professional background and qualifications to serve as a Judge on the U.S. Court of Appeals for Veterans Claims (CAVC) and explain why you are seeking this position.

Response: My professional life has been dedicated to the protection and well-being of the American servicemember. As an aviator with the 101st Airborne Division (Air Assault), as an Army prosecutor upholding the necessary discipline of a well-functioning unit, and as a defense attorney representing individual Soldiers facing the prospect of losing their livelihoods and freedom, I have endeavored to seek the best for the men and women who answered their nation's call to service. Through these experiences and more, I have gained valuable skills—the technical skill required to read, understand, and apply statutes and regulations and the professional skill required to hear all sides of a controversy and consider each argument dispassionately and without bias. This professional and personal background has equipped me with the abilities and temperament needed to serve as an impartial arbiter on this court.

I am seeking this position because it gives me an opportunity to continue to serve the Republic and her people. It has been my honor to be nominated by the President to serve and, I believe that, if confirmed, I will do so effectively.

2) How do you approach statutory interpretation, and what methodology do you use to determine congressional intent when statutory language is ambiguous?

Response: My approach to statutory interpretation begins with the text. Only the text has been through the process of bicameral passage and presentment. The goal of statutory interpretation is to understand the original public meaning of the words as promulgated. That understanding is properly informed by a full understanding of the context and structure of the statute and the history of the time in which it was passed. Other sources of knowledge—from floor debates to scholarly articles—can be helpful to the extent that they shed light on the original public meaning of the text.

While understanding the meaning of a statute's words is sometimes an easy task, it is not always so. However, even when the original public meaning of a statute is difficult to discern or is ambiguous, the judge's role is not to impose his own policy preferences. My job, if confirmed, would be to do my best to determine the meaning of the statute in question and not to use apparent ambiguity as a reason to exchange the tools and purposes of a judge with those of a legislator.

3) What are your views on the relative roles of attorney/advocate representation versus pro se representation in veterans' claims?

Response: Many individuals who come before the court are able to do so with the help of a professional advocate, often through the admirable contributions of their fellow citizens. For those who cannot, both at CAVC and at lower levels of adjudication, our system is designed to ensure, as much as possible, that they receive a fair hearing. For example, the VA's duty to assist a veteran in developing a claim or the court's liberal rule of construction for pro se notice of appeal filings, are used to ensure that claims, if rejected, are rejected for lack of merit rather than lack of legal sophistication when appropriate. If confirmed, my role as a judge would be to ensure that each party before me, claimant and government, is given a fair opportunity to present a case regardless of their representation or lack thereof.

4) What do you consider a reasonable timeframe for the Court to issue a decision in a given case?

Response: The amount of time appropriate for a decision varies case by case. Some questions appropriately require more time than others. That said, litigants before the court deserve timely adjudication of the matters they bring before it. If confirmed, I would work diligently and efficiently to handle the cases assigned to me individually and would join with my colleagues to consider the systems and processes by which the court intakes and processes cases with the goals of continual improvement and a reduction of the court's backlog.

5) If you believed a VA position reflected an incorrect interpretation of a statute — even though that position was consistent with long-standing agency practice — would you be willing to reverse it?

Response: Keeping in mind the weighty considerations of stare decisis and the possibility of a binding precedent on any particular point of law, the judge's role is to faithfully and accurately apply the law, as promulgated by the political branches of the government, to the facts at hand in any given case. If confirmed, I would seek to do just that in each instance, including in cases where such a method results in a ruling inconsistent with long-standing agency practice.

6) Would the potential cost or disruption of overturning an established rule or practice factor into how you would adjudicate a case?

Response: If confirmed, I will consider each argument put forward by the litigants that appear before me in court. Ultimately, the judge's role is to say what the law is and to apply that law to the facts before him. On the other hand, the practical consequences of the law have been entrusted to the political branches. Beyond this, I would follow the Supreme Court's guidance on the appropriate stare decisions factors when considering whether to overturn precedent.

7) The claims process — from the initial application through an appeal to the Board of Veterans' Appeals — is designed to be non-adversarial and preferential to the claimant. That posture changes once a case reaches the CAVC, where review is de novo and more traditionally adversarial. What in your background has prepared you to navigate that shift? How would you approach reviewing cases de novo after they've moved through a system intentionally designed to favor the claimant?

Response: I have been fortunate in my career to have represented both individual clients navigating their own place in complex legal systems and large institutions working to lawfully administer such systems to the benefit of all. I have been both a prosecutor and a defense attorney. The variety of my experience has given me the opportunity to see the legal world from multiple angles and to consider the different interests at stake. A judge on the Court of Appeals for Veterans Claims must have the circumspection to contemplate each argument and point of view without prejudice. If I am confirmed, I will dedicate myself to the fair and impartial consideration of each case in my docket without fear or favor.

8) Since the earliest days of judicial review of veterans' claims, courts have recognized that Congress intended VA to "fully and sympathetically develop the veteran's claim to its optimum." *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). Yet the claims process has moved increasingly toward mandatory forms and decisions that are fully or nearly fully automated. How do you view VA's duty to run a sympathetic, claimant-friendly process in an era of automation and AI? What would you expect of a veteran — particularly an elderly veteran — navigating this process, and what would you expect of VA?

Response: The VA's duty to support veterans in developing their claims is unchanged in the face of technological development. I have, in my time in government service, been consistently impressed with the efforts, skill, and dedication of the civil servants who make the everyday machinery of our

Federal government work. I do not have any specific proposals for how the VA should adapt to the current times. However, I hope and expect that those entrusted with such duties will faithfully perform them. If confirmed, I will apply the appropriate legal standards to the facts of each case. As these issues may come before the court during my time on the bench, it would not be appropriate for me to comment in greater detail.

9) For decades, the VA benefits system has struggled with inadequate medical evidence, a problem that has worsened since VA outsourced most compensation and pension exams to private contractors. Despite a CAVC remand rate that typically runs 80% or higher — driven in large part by inadequate exams — there has been little improvement. What role can the Court play in driving meaningful improvement in the quality of evidence VA produces?

Response: In our system of government, courts have neither force nor will, merely judgment. To that end, the court's proper role is to hold each party to its burdens. Congress or the executive branch may react to unfavorable court decisions by making changes to the benefits system or their administration of that system, but the court's role must be confined to applying the law to the facts in the individual cases that come before it. If confirmed, I will be mindful of my role and not seek to impose my own vision of an ideal benefits system but rather faithfully adjudicate cases arising from the system established by the political branches.

10) Veterans are increasingly turning to unaccredited companies that conceal their own involvement while pushing mass-produced, AI-generated claims submissions. VA has issued numerous cease-and-desist letters to such companies in recent years, largely ignored, in part because there are no meaningful penalties for this unauthorized practice. What role should the Court play in addressing unaccredited representation, particularly where the responsible parties avoid formally appearing on the record?

Response: The Court of Appeals for Veterans Claims is necessarily bound to the record of the cases that come before it and lacks the investigative or enforcement tools that could traditionally be used to combat practices such as those described in this question. If confirmed, I will faithfully apply the statutes and regulations developed by the political branches and pledge to consider each case on the merits of the arguments put forth. Where appropriate, I would employ the tools that are available to a judge to ensure proper, ethical behavior before the court. As this issue may come before me during my time on the bench, it would be inappropriate for me to comment further.

11) Under the Supreme Court's 1994 decision in *Brown v. Gardner*, veterans' benefits statutes have historically been interpreted liberally in favor of veterans. This "pro-veteran canon" has come under increasing criticism from strict textualists. Do you believe there remains an ongoing role for the pro-veteran canon in interpreting veterans' benefits statutes?

Response: I am aware of Justice Kavanaugh's concurrence in *Rudisill v. McDonough* that questions the foundational basis of the pro-veteran canon. However, that canon has been invoked repeatedly over the years by the Court of Appeals for the Federal Circuit and the Supreme Court itself. If confirmed, my duty would be to apply binding precedents of higher courts unless and until those courts overturn such precedents. As this issue may come before the court during my time on the bench, it would not be appropriate for me to comment further.

12) Since many cases of military sexual trauma go unreported during service, do you believe non-DOD evidence can be sufficient for veterans to corroborate an instance of Military Sexual Trauma for purposes of establishing eligibility for disability compensation benefits?

Response: Non-DOD evidence can be helpful in establishing a current diagnosis, the presence of an in-service triggering event, or a medical nexus necessary for compensation. Ultimately, the rules

surrounding the acceptance of such evidence and the burden of proof necessary to establish a valid claim for compensation are entrusted to the political branches. If confirmed, I will faithfully and objectively apply those rules to the facts as presented in the cases that come before me.

13) Section 1131 of Title 38, United States Code, grants basic disability compensation entitlement to a veteran who "was discharged or released under conditions other than dishonorable." VA's process for determining if a veteran's service is considered "under conditions other than dishonorable" has been scrutinized by stakeholders and legal scholars. What are your thoughts on the eligibility of veterans with Other Than Honorable or Bad Conduct discharges for VA benefits?

Response: The Court of Appeals for Veterans Claims is bound by controlling precedent from the Court of Appeals for the Federal Circuit and the Supreme Court of the United States. The Federal Circuit ruled recently that the VA's process for determining "conditions other than dishonorable" is "consistent with the statute." *Garvey v. Wilkie*, 972 F.3d 1333, 1340 (Fed. Cir. 2020). To the extent that this question is inquiring about the issues at play in *Garvey*, if confirmed, I will be bound by the Federal Circuit's holding. This question is likely to come before me during my time on the court. It would be inappropriate for me to decide the issue before examining the facts and the arguments in a specific case or for me to comment further at this time.

14) Describe your roles and responsibilities and the types of matters you worked on while employed at the Department of Labor.

Response: Since February 2026, I have served as the Chief of Staff and a Senior Counselor in the Office of the Solicitor. In conducting my Chief of Staff duties, my responsibilities are largely organizational and structural. I am responsible for ensuring that the Solicitor is appropriately staffed and briefed on relevant issues, that meetings occur on time and stay on topic, and that decisions get made at the appropriate level by the appropriate personnel. As a Senior Counselor, I have focused on internal guidance and rule-making. I review NPRMs, departmental clearances, talking points, etc. for legal sufficiency. It has been my great honor to work alongside the dedicated and talented civil servants in the Department of Labor who strive to protect the wages, benefits, safety, and health of the American worker.

15) While employed at the Department of Labor did you have any involvement with investigations related to misconduct by Secretary Lori Chavez-DeRemer, Shawn DeRemer, Melissa Robey, Jihun Han, Rebecca Wright or any other agency leadership? If so, please describe.

Response: I was not involved in any investigation related to alleged misconduct by Secretary Lori Chavez-DeRemer or any other agency employees.

16) Given the anti-abortion views you state in an article published on the Federalist Society web site, including that "abortion is murder," how will you be able to objectively decide cases where a veteran or dependent was denied a benefit or reimbursement for a medical cost related to abortion care?

Response: During law school, I chose to enroll in a Reproductive Rights and Justice seminar. My goal in that course was to listen to the arguments of bright students who saw the issue of abortion very differently than I did in an attempt to find common ground and to understand their positions on their own terms. The article was a result of those efforts. My hope is that an unbiased observer would see in the article an earnest attempt to hear, understand, and reason with those who do not share my opinions. If confirmed, I pledge to approach each case with the same careful objectivity behind my desire to take the seminar.

Perhaps more importantly, if confirmed, my role as a judge on the Court of Appeals for Veterans Claims would not be to enshrine my own policy preferences or moral judgments into law. My duty would be to faithfully apply the laws and regulations promulgated by the political branches to the facts of each specific case. In performing that duty, I would place aside my own preferences and instead seek to honestly determine and apply the law as I receive it rather than how I, or anyone else, might wish it to be.

As a minor point of clarification, the article was published on TheFederalist.com, a website unaffiliated with the Federalist Society.

17) How has your membership in the Federalist Society informed your view of the role of government and the role of courts in our country?

Response: The Federalist Society has had its largest effect on my own thinking through the programming put on by its various chapters, most notably the talks and debates I attended while a student at Yale Law School. The Federalist Society's dedication to open debate and discussion led to my own exposure to a wide variety of thinkers with unique approaches to the law and our constitutional order. While I have not adopted the opinions of each of these speakers, I have benefitted from the dignified and respectful presentation of their views and from the Society's collective dedication to freedom of speech and the exchange of ideas.

18) Do you believe the President, VA Secretary, or any other Administration officials should have influence over CAVC? Why or why not?

Response: The Court of Appeals for Veterans Claims must maintain its judicial independence, a crucial and fundamental value of any court and one of the most important reasons for this particular court's creation. No member of the Executive or Legislative branches gets a vote on individual cases. Such influence would be destructive to the court's very purpose.

The political branches do, of course, exercise a measure of influence on the court in other ways as part of our constitutional system of checks and balances. For example, the President's decision to nominate me and this committee's work to examine my candidacy as part of the Senate's advice and consent function represent the proper exercise of their constitutional prerogatives.

Questions for the Record
Nomination Hearing of Daniel Rendleman for
Judge for the U.S. Court of Appeals for Veterans Claims
From Ranking Member Richard Blumenthal

1. What is your current political party affiliation?

   Response: I am unaffiliated.

2. Did anyone advise you to change your party affiliation prior to your nomination or during the nomination process?

   Response: No.

3. Were you required to sign a Non-Disclosure Agreement during the nomination process?

   Response: No.

PART I: ALL OF THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

1. Basic Biographical Information

Please provide the following information.

Position to Which You Have Been Nominated	
Name of Position	**Date of Nomination**
Judge, United States Court of Appeals for Veterans Claims	**07/14/2026**

Current Legal Name			
First Name	**Middle Name**	**Last Name**	**Suffix**
Daniel	**Ford**	**Rendleman**	

Addresses					
Residential Address (do not include street address)			**Office Address** (include street address)		
[redacted]			**Street: 200 Constitution Avenue NW**		
City: Washington	**State: DC**	**Zip: 20010**	**City: Washington**	**State: DC**	**Zip: 20210**

Other Names Used						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
None.					Est ☐	Est ☐

Birth Year and Place

Year of Birth (Do not include month and day)	Place of Birth
1987	W. Lafayette, Indiana

Marital Status					
Check All That Describe Your Current Situation:					
Never Married	**Married**	**Separated**	**Annulled**	**Divorced**	**Widowed**
☐	☒	☐	☐	☐	☐

Spouse's Name (current spouse only)			
Spouse's First Name	**Spouse's Middle Name**	**Spouse's Last Name**	**Spouse's Suffix**
Katherine	Sarah	Rendleman	

Spouse's Other Names Used (current spouse only)						
First Name	**Middle Name**	**Last Name**	**Suffix**	Check if Maiden Name	**Name Used From** (Month/Year) (Check box if estimate)	**Name Used To** (Month/Year) (Check box if estimate)
Katherine	Sarah	Calcaterra		☒	10/ 1987 Est ☐	05/2008 Est ☐

Children's Names (if over 18)			
First Name	**Middle Name**	**Last Name**	**Suffix**
I do not have any children who are over 18.			

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college/ correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
Yale Law School	**Law School**	**09/2014** Est ☐	**05/2017** Est ☐ Present ☐	**JD**	**May 22, 2017**
Georgetown University	**University**	**09/2005** Est ☐	**05/2009** Est ☐ Present ☐	**BA**	**May 16, 2009**
The Judge Advocate General's Legal Center and School	**Military School**	**08/2020** Est ☐	**05/2021** Est ☐ Present ☐	**LLM**	**May 27, 2021**
United States Army Aviation Center of Excellence	**Flight School**	**04/2010** Est ☐	**09/2011** Est ☐ Present ☐	**AH-64D Rating**	**Sep 19, 2011**

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other federal employment, State Government (Non-federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
Federal Employment (Detail from the US Army)	**US Dept of Labor, Office of the Solicitor**	**Chief of Staff, Senior Counselor**	**Washington, DC**	**02/2026** Est ☐	Est ☐ Present ☒

Active Military Duty Station	**US Army United States Military Academy at West Point**	**Chief of Administrative Law, Major**	**West Point, NY**	**07/2025** Est ☐	**02/2026** Est ☐
Active Military Duty Station	**US Army Fort Campbell**	**Senior Defense Counsel, Major**	**Fort Campbell, KY**	**08/2023** Est ☐	**07/2025** Est ☐
Active Military Duty Station	**US Army United States Army Garrison – Ansbach**	**Officer-in-Charge, Brigade Judge Advocate, Major**	**Ansbach, Germany**	**07/2021** Est ☐	**06/2023** Est ☐
Active Military Duty Station	**US Army The Judge Advocate General's Legal Center and School**	**Student, Major**	**Charlottesville, VA**	**08/2020** Est ☐	**06/2021** Est ☐
Active Military Duty Station	**US Army Joint Base Lewis-McChord**	**Trial Counsel (Prosecutor), Captain**	**Joint Base Lewis-McChord, WA**	**09/2017** Est ☐	**07/2020** Est ☐
Active Military Duty Station	**US Army Yale Law School**	**Funded Legal Education Program Student, Captain**	**New Haven, CT**	**08/2014** Est ☐	**05/2017** Est ☐
Active Military Duty Station	**US Army Fort Campbell**	**Platoon Leader, Aviator, Captain**	**Fort Campbell, KY**	**09/2011** Est ☐	**07/2014** Est ☐
Active Military Duty Station	**US Army Fort Rucker**	**Flight Student, 1st Lieutenant**	**Fort Rucker, AL**	**04/2010** Est ☐	**09/2011** Est ☐
Active Military Duty Station	**US Army Georgetown ROTC**	**Gold Bar Recruiter, 2nd Lieutenant**	**Washington, DC**	**09/2009** Est ☐	**04/2010** Est ☐
Non-Government Employment	**SOS Children's Villages**	**Street Fundraiser**	**Washington, DC**	**05/2009** Est ☐	**09/2009** Est ☐

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year)	Date Service Ended (month/year) (check box if estimate) (check

		(check box if estimate)	"present" box if still serving)
None.		Est ☐	Est ☐ Present ☐

4. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

Military Awards:

Army Commendation Medal (2013, 2014, 2026)
Meritorious Service Medal (2023, 2025)
Member of the Honorable Order of St. Barbara from the Air Defense Artillery Association (2023)
NATO Service Medal (2023)
Air Assault Badge (2014)
Air Medal (2013)
Afghanistan Campaign Ribbon (2012)
Combat Action Badge (2013)
Army Aviator Badge (2011)
Army Achievement Medal (2010)
Army Service Ribbon (2007)
National Defense Service Medal (2007)
Global War on Terror Service Medal (2007)

Academic Awards:

Florence M. Kelly '37 Family Law Prize (2016)
Blackstone Legal Fellowship (2016)
Merrick Medal from the Philodemic Society of Georgetown University (2009)
Morris Medal for History from Georgetown University (2009)
Georgetown Provost Award (2009)
Father Durkin Award (2009)
Phi Beta Kappa (2009)
High School Valedictorian (2005)

Community Recognition:

Eagle Scout (2004)

5. Memberships

List all memberships held in professional, social, business, fraternal, scholarly, civic, charitable, or other organizations in the last ten years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax-deductible donation of $1,000 or less, Parent-Teacher Associations, or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

Name of Organization	Dates of Your Membership (You may approximate)	Position(s) Held
Alumni Philodemica	2010 – present	Member
Federalist Society	2025 – present	Member

6. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

Name of Office	Elected/Appointed/ Candidate Only	Year(s) Election Held or Appointment Made	Term of Service (if applicable)
I have never been a candidate for or been elected or appointed to a political office.			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

Name of Party/Election Committee	Office/Services Rendered	Responsibilities	Dates of Service
None.			

(C) Itemize all individual political contributions of $200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

Name of Recipient	Amount	Year of Contribution
None.		

7. Publications

List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles or blog posts published on the Internet.

Title	Publisher	Date(s) of Publication
The Untrue History of Unsworn Statements: From Bad History to Bad Law and the Way Back to Reason	Belmont Law Review	2022
Amy Coney Barrett Is The First Big Potential Supreme Court Victory For Republicans In 90 Years	TheFederalist.com	October 15, 2020
5 Things the Right Can Learn from Abortion Supporters at Yale Law School	TheFederalist.com	May 25, 2017
Fool's Gold: A History of the Philodemic Society from 1900-1977	Utraque Unum	Winter 2011

8. Public Statements

(A) List any testimony, official statements or other communications, including those made on the Internet including on social media or other digital content sites, relating to matters of public policy that you have issued or provided or that others presented on your behalf to public bodies or officials.

None.

(B) List any speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the dates and places where such speeches or talks were given.

Georgetown University, panel discussion on legal careers, March 31, 2026.

Mississippi College of Law, panel discussion on criminal procedure with an emphasis on military courts, April 17, 2025.

Southern Illinois University, panel discussion on military justice, April 7, 2025.

Court of Appeals for the Armed Forces CLE Conference, I spoke about the historical practice of unsworn statements in courts-martial, March 11, 2023.

99pages Book Club, panel discussion on "Why We're Polarized" by Ezra Klein, October 4 and 25, 2020.

Yale Law School, panel discussion on the work of Professor Jean Koh Peters, November 2, 2018.

(C) List all interviews you have given to newspapers, magazines or other publications, and radio or television stations (including the dates of such interviews).

News and Views, Radio Interview, August 7, 2017.

9. Agreements or Arrangements

□ See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

Status and Terms of Any Agreement or Arrangement	Parties	Date (month/year)

Not applicable.		

10. Lobbying

Have you ever registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

11. Testifying Before the Congress

(A) Do you agree to appear and testify before any duly constituted committee of the Congress upon the request of such Committee?

Yes.

(B) Do you agree to provide such information as is requested by such a committee in a timely and accurate manner?

Yes, I agree to provide all such information that I am legally authorized to disclose.

UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS

SUPPLEMENTAL QUESTIONNAIRE FOR NOMINEES
TO THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS

PUBLIC

1. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels, or conferences of which you are or have been a member, and provide the titles and dates of any offices which you have held in such groups.

   None.

2. **Bar and Court Admission**:

   a. Are you currently a member in good standing of the bar of a Federal court or of the highest court of a state?

      Yes.

   b. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

      Illinois, November 9, 2017. There have been no lapses in membership.

   c. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Provide the same information for administrative bodies that require special admission to practice.

      The majority of my practice has been before courts-martial. I was qualified and certified to appear before such courts under Article 27 of the UCMJ through the action of the US Army's Judge Advocate General in February 2018. In addition, on April 5, 2021, I was admitted to practice before the United States Supreme Court.

      There have been no lapses in membership.

3. **Memberships**:

   a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Question 12 on the Committee's initial questionnaire, to which you belong, or to which you have

belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, or conferences.

None.

b. Indicate whether any of these organizations of which you are a member currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe what efforts, if any, you made to try to change the organization's discriminatory policies or practices.

None of the organizations listed in the initial questionnaire discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

4. **Published Writings and Public Statements**:

a. If you have published any written materials (letters to the editor, articles, reports, memoranda, policy statements, friend of the court briefs, testimony or other official statements or communications) relating in whole or in part to matters of public policy or legal interpretation related to veterans issues, please supply those materials to the Committee.

None.

b. Supply transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions that related in whole or in part to veterans issues. If you do not have a copy of the speech or a transcript or recording of your remarks, provide the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

(Note: As to any materials requested in this question, please omit any confidential materials or materials protected by the attorney-client privilege.)

None.

5. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge and, if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have not clerked for a judge.

ii. whether you practiced alone and, if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names, and addresses of law firms or offices, companies, or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

2017 – 2020
U.S. Army Joint Base Lewis-McChord
2008B N. 3rd St.
Joint Base Lewis-McChord, WA 98433
Trial Counsel, Prosecutor

2020 – 2021
U.S. Army Judge Advocate General's Legal Center and School
600 Massie Rd.
Charlottesville, VA 22903
Student

2021 – 2023
U.S. Army Garrison Ansbach
Bldg. 5817B, Katterbach Kaserne
Asnbach, Germany
Officer-in-Charge, Brigade Judge Advocate

2023 – 2025
U.S. Army Fort Campbell
852 N. Carolina Ave.
Fort Campbell, KY 42223
Senior Defense Counsel

2026
U.S. Military Academy at West Point
752 Thayer Rd.
West Point, NY 10996
Chief of Administrative Law

2026 – present
U.S. Department of Labor, Office of the Solicitor
200 Constitution Ave, NW
Washington, D.C. 20010
Chief of Staff, Senior Counselor (on detail from U.S. Army)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the ten most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years;

I began my legal career with the U.S. Army Judge Advocate General's Corps at Joint Base Lewis-McChord. There, I served four months as an attorney in the administrative law section before being moved to the military justice section. There, I began my work as a prosecutor: advising on criminal and administrative investigations, representing the Army in administrative tribunals, advising commanders, and representing the United States in courts-martial.

I was then assigned to The Judge Advocate General's Legal Center and School for the 10-month long academic graduate course where I earned an LLM in military justice. In July 2021, I was then assigned to United States Army Garrison Ansbach in Germany where I served as the brigade judge advocate for the 12th Combat Aviation Brigade and the officer-in-charge of the Ansbach Law Center. During that assignment, I led an office of approximately 15 individuals, including military officers, noncommissioned officers, and enlisted personnel as well as civilian attorneys and paraprofessionals. My practice there included criminal law as well as administrative law, contract and fiscal law, ethics, and client services including powers of attorney, wills, landlord-tenant issues, among other legal matters. I was the primary legal advisor to the commanders on post, including the brigade commander of 12th combat aviation brigade, the garrison commander, and the commanders of other units on the post.

After this assignment, I completed the Army's Intermediate Level Education at Redstone Arsenal, Alabama, before reporting to Fort Campbell, Kentucky to head the Trial Defense Service Field Office located there. There, I led a team representing soldiers of the 101st Airborne Division, 5th Special Forces Group, 160th Special Operations Aviation Regiment, and other units during investigations, administrative tribunals, and courts-martial.

I was then assigned as the Chief of Administrative Law at the United States Military Academy at West Point where my team handled administrative and general law, contract and fiscal law, labor law, ethics compliance, investigations, and other requirements.

In February of this year, I was detailed to the Department of Labor. I currently serve as the chief of staff and a senior counselor to the Solicitor of Labor. My work has a special focus on rulemaking and advice to client agencies.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized;

My legal career has been roughly split between criminal litigation and unit support. When supporting military organizations, my clients were the United States and the Department of the Army acting through its authorized officials. In practice, I was advising commanders of companies, battalions, brigades, garrisons, corps, or other units, working with those commanders' staffs as appropriate. This advice covered a wide variety of topics, but the two most consistent areas of practice were criminal law and administrative law. Intermittently during these periods, I also advised individual Soldiers in the context of client legal services. For example, I might advise a Soldier on a power of attorney or on the completion of a will prior to his deployment. Due to the commander's authority under the Uniform Code of Military Justice, I also advised commanders when I was assigned to prosecute criminal cases.

When assigned to the United States Army's Trial Defense Service, I represented individual Soldiers in administrative disciplinary proceedings and criminal litigation.

In my current position, my clients are the United States and the Department of Labor.

iii. any law practice or legal experience that involved veterans' law.

Most of my law practice in the Army has not dealt directly with veterans' law. However, when I was assigned to the Trial Defense Service, I advised my clients on the consequences that litigation choices would have on their future claims for veterans' benefits. Although most of my practice has not been directly in veterans' law, my work as an Army judge advocate and in the Department of Labor has required close statutory and regulatory interpretation, careful review of administrative records, and disciplined decision-making in matters affecting substantial individual rights. While assigned to the Trial Defense Service, I have also advised service members on how litigation and discharge-related decisions could affect future claims for veterans' benefits. The combination of my military service and my experience representing both the government and individual soldiers has given me a practical understanding of the legal and personal issues that arise from military service and would enable me to approach veterans' cases with fairness, rigor, and respect.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates. Approximately 40% of my practice has been in litigation. During two periods in my career, when I was a prosecutor at JBLM and when I was a defense attorney at Fort Campbell, I appeared in court frequently. These appearances were always in military courts-martial. In addition, during these periods, I frequently appeared before administrative tribunals, known as Administrative Separation Boards or Boards of Inquiry.

   i. Indicate the percentage of your practice in:
      1. federal courts **0%**
      2. state courts of record **0%**
      3. other courts **100%**
      4. administrative agencies **0%**

   ii. Indicate the percentage of your practice in:
      1. civil proceedings **0%**
      2. criminal proceedings **100%**

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In courts-martial, I have tried approximately 10 felony cases to a contested verdict. In approximately 15 to 20 additional cases, I advised my clients through guilty pleas with contested sentencing hearings. Those sentencing

hearings included both sides presenting evidence, cross-examining witnesses, and arguing our positions to the court. These cases were fairly evenly split between service as chief counsel and associate counsel. In administrative tribunals, I have tried approximately 45 cases to a final verdict.

e. Describe your practice, if any, before the Supreme Court of the United States. Supply any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

6. **Litigation**: Describe the ten most significant litigated matters that you personally handled, whether or not you were the attorney of record. Provide the citations, if the cases were reported, and the docket number and date if unreported. Provide a summary of the substance of each case. Identify the party or parties whom you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   a. the date of representation;
   b. the name of the court and the name of the judge or judges before whom the case was litigated; and
   c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Military courts-martial do not receive docket numbers, and my records are not complete concerning the other parties.

1. *United States v. PFC Tyler Morgan*, (Joint Base Lewis-McChord) (Judge COL J. Harper Cook) (Representation: 2019 – 2020)

In 2020, I served as lead counsel for the United States in the court-martial of PFC Tyler Morgan for murder, accessory after the fact to aggravated assault, conspiracy to obstruct justice, and false official statement. After extensive motions practice, the government accepted a plea deal for attempted murder in exchange for the defendant's material support in cases brought against his co-conspirators. My participation in this case included assisting in the investigation, the examination and cross-examination of witnesses, and the writing and arguing of motions.

Opposing Counsel:
CPT Austin Bowyer
Trial Defense Service
2109 Pendleton Ave
Joint Base Lewis-McChord, WA 98433
253-477-1847

2. *United States v. PFC Christopher Nall* (Joint Base Lewis-McChord) (Judge COL J. Harper Cook) (Representation: 2019 – 2020)

This case was a 2020 court-martial for aggravated assault, domestic violence, battery, false official statement, and a failure to obey orders. This case resulted in a guilty plea for all charges and specifications. My participation included the examination and cross-examination of witnesses and the presentation of the sentencing argument.

Opposing Counsel:
CPT Josslin Burke
Trial Defense Service
2109 Pendleton Ave
Joint Base Lewis-McChord, WA 98433
253-477-1847

Mr. Morgan Benfield
1201 Pacific Ave #600
Tacoma, WA 98402
(253) 352-4222

3. *United States v. SGT Brad Allbright* (Joint Base Lewis-McChord) (Judge: LTC Jennifer Green) (Representation: 2019)

This case was a 2019 court-martial for battery and domestic violence. This case was litigated to a verdict of guilty on all charges and specifications. The defendant elected for a bench trial. My participation included the presentation of evidence, the cross-examination of witnesses, the drafting and arguing of motions, and the presentation of the sentencing argument.

Opposing Counsel:
CPT Sophia Hildreth
Trial Defense Service
2109 Pendleton Ave
Joint Base Lewis-McChord, WA 98433
253-477-1847

4. *United States v. SSG Demetrius Smith* (Fort Campbell) (Judge: COL John Maloney) (Representation: 2024)

In this trial, I served as Assistant Defense Counsel supporting my subordinate, CPT Daniel Hesse. We represented our client in a court-martial for sexual assault and abusive sexual contact. The case was litigated to a final verdict of not guilty on all charges and specifications. My role included the drafting and

arguing of motions, the presentation of evidence, the cross-examination of witnesses, including the prosecution's star witness, and the closing argument.

Opposing Counsel:
MAJ J.R. Lystash, CPT Tyler Scharff
Office of Special Trial Counsel
2577 Screaming Eagle Blvd.
Fort Campbell, KY 42223
931-542-7849

5. *United States v. SPC Jerome Jones* (Fort Campbell) (Judge: LTC Daniel Mazzone) (Representation: 2024-2025)

This case was a 2025 court-martial for aggravated assault, domestic violence, and attempted destruction of property. The case was litigated to a final verdict of not guilty on all charges and specifications. My participation included the drafting and arguing of motions, the presentation of evidence, the cross-examination of witnesses, and the closing argument.

Opposing Counsel:
MAJ J.R. Lystash,
CPT Tyler Scharff
Office of Special Trial Counsel
2577 Screaming Eagle Blvd.
Fort Campbell, KY 42223
931-542-7849

6. *United States v. SSG Claudette Gouacide* (Fort Campbell) (Not referred to court-martial) (Representation: 2024-2025)

During 2024 and 2025, I represented a decorated soldier who years previously, after several successful deployments, suffered personal challenges that ultimately led to her going AWOL. Though charges were preferred against her, I was able to negotiate with the government counsel on this case to achieve a fair outcome that allowed her to exit the service without a criminal conviction or jail time that might prevent her from re-integrating into civilian life.

Opposing Counsel:
CPT Sergio Suarez
5th Special Forces Group
6101 Tennessee Ave.
Fort Campbell, KY 42223
270-956-3893

7. *United States v. SPC Snead* (Fort Campbell) (Judge: COL John Maloney) (Representation: 2023)

This was a 2023 court-martial for four specifications of rape of a child. My major contributions to the case were the close supervision of one motion and the drafting and arguing of a dispositive motion under Rule for Court-Martial 707 alleging procedural violations of the military's speedy trial requirements as it related to the dismissal and re-preferral of charges. I was successful in my motion, and the case was accordingly dismissed.

Opposing Counsel:
MAJ J.R. Lystash,
CPT Shelby Deckert
Office of Special Trial Counsel
2577 Screaming Eagle Blvd.
Fort Campbell, KY 42223
931-542-7849

8. *United States v. PFC Eric Compean* (Judge: COL John Maloney) (Representation 2023-2024)

This was a 2024 court-martial for attempted rape, attempted sexual assault, attempted aggravated sexual contact, indecent conduct, larceny, and false official statement wherein I represented the defendant. My role in the case included successful argument at a pre-trial confinement hearing, the presentation of evidence, the cross-examination of witnesses, and the presentation of the sentencing argument. The case ultimately resulted in a guilty plea wherein the accused was able to take responsibility for his actions, received a fifteen-month confinement sentence, and was discharged from the service.

Opposing Counsel:
MAJ John Christie
CPT Tom Evans
Office of Special Trial Counsel
2577 Screaming Eagle Blvd.
Fort Campbell, KY 42223
931-542-7849

9. *United States v. SPC Perez-Torres* (Fort Campbell) (Judge: LTC Daniel Mazzone) (Representation: 2024)

This case was a 2024 court-martial for attempted indecent recording and indecent conduct. I cross-examined government witnesses at the sentencing hearing, but my primary contributions were in the supervision of my subordinate, CPT Evangelista, and support in the negotiations with government

counsel. The case ultimately resulted in a guilty plea wherein the accused received confinement and a Bad Conduct Discharge.

Opposing Counsel:
CPT Andy Harvey
101st Airborne Division (Air Assault)
Office of the Staff Judge Advocate
2577 Screaming Eagle Blvd.
Fort Campbell, KY 42223
931-542-7849

10. *United States v. SPC Jeffrey Utsumi* (Joint Base Lewis-McChord) (Judge: COL J. Harper Cook)

This case was a 2019 court-martial for aggravated assault upon a spouse. As the prosecutor in this case, I presented evidence, cross-examined witnesses, and presented the sentencing argument. The case ultimately resulted in a guilty plea wherein the accused received confinement and a Bad Conduct Discharge.

Opposing Counsel:
CPT Michelle Buckley
Trial Defense Service
2109 Pendleton Ave.
Joint Base Lewis-McChord, WA 98433
253-477-1847

7. **Judicial Opinions/Offices:**

a. If you are or have ever been a judge, attach a statement providing (1) citations for the ten most significant opinions you have written, (2) a short summary of and citations for all appellate opinions either reversing your decision or confirming it with significant criticism of your substantive or procedural rulings, and (3) citations for significant opinions on federal or state constitutional issues, together with citations for any appellate court rulings on your decisions in those cases. (If any of the opinions were not officially reported, please provide a copy of the opinions.)

I have never served as a judge.

b. State (chronologically) any judicial office you have held and whether you were elected or appointed. Please provide a description of the jurisdiction of each such court.

Not applicable.

8. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities.

   (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

   The most significant legal activities I have pursued are those contested cases that I litigated on behalf of the United States or of individuals soldiers. Additionally, I have had the honor of advising combat units during the beginning of the war in Ukraine, assisting commanders to make decisive choices in the pursuit of American interests in a dynamic environment. My involvement included advising on planning, compliance with international agreements, rules of engagement, and personnel readiness. Further, my work for the Department of Labor has involved advising government agencies such as the Wage and Hour Division, the Occupational Safety and Health Administration, and the Office of Federal Contract Compliance Programs through the administrative rulemaking process. This work has involved the close reading of proposed rules and collaborating with civil servants to make sure the policy goals of client agencies are pursued in accordance with federal law.

9. **Lobbying Activities:** List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s).

   (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

   I have never performed any lobbying activity.

10. **Teaching**: What, if any, courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide copies to the committee.

    I have not taught any courses.

11. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

    I have no plans to seek outside employment.

12. **Principal Office of the U.S. Court of Appeals:** By statute, the principal office of the U.S. Court of Appeals for Veterans Claims is in the Washington, D.C., metropolitan area.

If confirmed, would you maintain your permanent residence within commuting distance of the Court while in active service?

I currently reside within Washington, D.C. and will continue to fulfill all statutory requirements, including those of 38 U.S.C. 7255.

13. **Charitable or Volunteer Work:** Please describe any charitable or volunteer work, including pro bono work, you have performed, particularly any work involving military personnel, veterans, or their families.

I have dedicated my career to supporting American soldiers as a member of the United States Army since 2007. Outside my military service, my volunteer efforts have been coaching little league, volunteering with my church, working with homeless in my hometown, and serving as a foster parent.

○