

## IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MICHAEL J. FORBES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 24-1953C
	)	(Judge Hadji)
THE UNITED STATES,	)	
	)	
Defendant.	)	

**RESPONSE TO MOTION FOR RELIEF**

Pursuant to Rule 7 of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully submits this response to the motion for relief, filed by plaintiff, Michael J. Forbes.<sup>1</sup> In his motion, Mr. Forbes states that the administrative record, filed with the Court on April 9, ECF No. 19, is deficient. Pl. Mot. at 1-4. Mr. Forbes alleges that because the Department of the Army disagreed with the inclusion of additional documents Mr. Forbes sought to be included in the record, that this, along with the timing of these discussions, is evidence of bad faith on behalf of the United States in filing the administrative record. *Id.* As a result, Mr. Forbes requests that this Court: 1) sanction the United States; 2) adjust the scheduling order; 3) enter a default against the United States; 4) “strike the April 9, 2025 docketed [a]dministrative [r]ecord in lieu of an appropriately conferred-upon administrative record;” 5) or some combination thereof. *Id.* at 5. Mr. Forbes’ arguments belie the facts and established law for administrative records and fail for the reasons below.

On April 2, 2025, as required by Appendix K ¶ 5, of the RCFC, and this Court’s March 25, 2025 scheduling order, the United States shared the administrative record with all substantive

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<sup>1</sup> “Pl. Mot. at \_” refers to pages in plaintiff’s motion for relief filed April 14, 2025 (ECF No. 20).

documents with Mr. Forbes. At this time, counsel for the United States shared the documents that composed the administrative record, and had not yet received a paginated version of the administrative record. On April 8, 2025, Mr. Forbes shared a list of documents that he believed should be included in the administrative record. Undersigned counsel shared this request with the agency.

On April 9, 2025, upon receiving the paginated administrative record paginated from the agency, along with a certification and index, counsel of record shared the administrative record with Mr. Forbes. At this time, the agency informed undersigned counsel that videos requested by Mr. Forbes did properly belong in the record. Upon sharing the administrative record with Mr. Forbes on April 9, 2025, undersigned counsel informed Mr. Forbes that the agency did not agree that any of the documents Mr. Forbes requested properly belonged in the administrative record, aside from the aforementioned videos. The United States then filed the administrative record with the Court, explaining that the United States, subject to the Court's permission, anticipated delivering physical copies of the videos along with a motion to correct the administrative record by April 16, 2025. ECF No. 19.

Mr. Forbes's allegations that the United States conferred in bad faith regarding the administrative record are at odds with the facts and law. The fact that the Government and Mr. Forbes did not come to an agreement that the requisite documents presented to, and considered by his command, were included in the administrative record does not support a conclusion of bad faith. Further undermining Mr. Forbes's allegations of bad faith is the fact that the agency considered the documents requested by Mr. Forbes to be included in the administrative record

and agreed that the agency inadvertently did not include videos that properly belong in the administrative record.<sup>2</sup>

While Mr. Forbes claims he has been denied “due process and a fair adjudication” because he received the paginated administrative record the same day it was filed, this omits the fundamental fact that the Government shared the entire administrative record with Mr. Forbes on April 2, 2025, as required by this Court. Pl. Mot. at 2. Mr. Forbes had a week to review the administrative record and to confer with the Government on its contents, and that discussion occurred. While Mr. Forbes disagrees with the agency’s certification of the completeness of the administrative record, the agency has certified that the administrative record composes all documents relied on by his command in making the separation decision, and because Mr. Forbes did not apply to the corrections board before filing in this Court, the Army has certified that the administrative record is complete. If Mr. Forbes believes there are gaps in the administrative record, he is required to file a motion to supplement, and the Government will respond accordingly.

Additionally, Mr. Forbes requests that this Court sanction the United States, strike the administrative record, or find the Government in default have absolutely no basis in this Court’s caselaw. His final request for relief, that the scheduling order be adjusted so he be given more time to review the administrative record, also fails because it is untimely. Under the Court’s March 25, 2025 scheduling order, the Government is to file its motion for judgment on the

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<sup>2</sup> To the extent that Mr. Forbes argues that the administrative record filed with the Court, and shared with Mr. Forbes, on April 9, 2025 is substantively different than the administrative record shared with Mr. Forbes on April 2, 2025, this is incorrect. The administrative record filed on April 9, 2025 is composed of the same substantive documents shared on April 2, 2025, with the only changes being the inclusion of additional administrative documents relating to Mr. Forbes personnel file, all of the documents merged and appropriately paginated, and the inclusion of a certification and index.

administrative record first on April 23, 2025. Mr. Forbes is not scheduled to file his motion for judgment on the administrative record until May 7, 2025. Because of this, the proper time for Mr. Forbes to request additional time to review the administrative record and prepare his motion would be after the Government files its motion.

Respectfully submitted,

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April 16, 2025

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