

# In the United States Court of Federal Claims

MICHAEL J. FORBES, <i>pro se.</i>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	No. 1:2024-cv-01953
	)	
THE UNITED STATES	)	MOTION TO SUPPLEMENT THE
	)	ADMINISTRATIVE RECORD
<i>Defendant.</i>	)	(Judge Hadji)
	)	

1. Plaintiff, Michael J. Forbes, *pro se*, respectfully requests that this Court grant this Motion to Supplement the Administrative Record (AR). The Plaintiff moves for supplementation of the record to assist the Court having a more complete record that includes pre-textual facts and communications that were repeatedly presented to the Defendant and should have been considered fully by the Defendant. These genuine issues of material fact cast significant doubt on the impetus of the investigations that produced the negative personnel actions that led to the Plaintiff's wrongful termination by the Defendant.
2. For material the Plaintiff asserts was omitted, Plaintiff must provide "provide reasonable, non-speculative grounds demonstrating that [the document] itself was considered, either directly or indirectly, by the [decision-maker]" *WildEarth Guardians v. Salazar*, 670 F. Supp. 2d 1, 6 (D.D.C. 2009).

## STANDARDS FOR APPROPRIATE SUPPLEMENTATION OF THE RECORD

*[I]t must be remembered that the 'Administrative Record is a fiction.' Al Ghanim Combined Group Co. Gen. Trad. & Cont. W.L.L. v. United States, 56 Fed. Cl. 502, 508 (2003) (quoting CCL Serv. Corp. v. United States, 48 Fed. Cl. 113, 118 (2000)); see also PlanetSpace Inc. v. United States, 90 Fed. Cl. 1, 4 (2009). . .*

*The principle that a reviewing court 'is not generally empowered to conduct a de novo inquiry into the matter being reviewed and to reach its own conclusions,' Fla. Power & Light Co., 470 U.S. at 744, 'exerts its maximum force when the substantive soundness of the agency's decision is under scrutiny,' Esch v. Yeutter, 876 F.2d 976, 991 (D.C. Cir. 1989), - Joyce Tery (d/b/a Shirt Shack) v. United States (Cl. Ct. Case #09-454-C, 2010, Ruling on Plaintiff's Motion to Supplement the Administrative Record).*

## SUPPLEMENTING THE RECORD IS NECESSARY

*Not surprisingly then, the courts have developed a number of exceptions countenancing use of extra-record evidence to that end. As recently summarized by two commentators, exceptions to the general rule have been recognized...when the agency failed to consider factors which are relevant to its final decision; ...in cases where evidence arising after the agency action shows whether the decision was correct or not; ....- Esch v. Yeutter, (D.C. 1989), 876 F.2d 976.*

## RCFC RULE 26, DUTY TO DISCLOSE

2. Notably the Defendant's omission of the Plaintiff's submissions to his Chain of Command, as well as the DASEB and ASRB Boards are relevant and necessary as they show that the Plaintiff fully informed the Defendant (at so many levels) of the violations of law that served as the pretext of the investigations that led to the Boards' wrongful adjudications. The conclusory statements of the investigation that was considered by the Boards, in their findings, does not reasonably encompass all genuine issues of material fact that Plaintiff repeatedly notified the Defendant of. In fact, the Plaintiff presents a significant genuine issue of material fact that features **"evidence arising after the agency action[,which]shows whether [their] decision was correct or not;"** ....(*Esch* 1989) (emphasis added)

## COMPETITIVE PREJUDICE AND OMISSIONS

5. Some of the evidence the Plaintiff moves to admit to the Court for consideration directly delves into the *minutia* comments quoted from the AR 15-6 investigation in the Defendant's arguments in its MJAR (ECF 24). The Defendant signed for the CD on June 22, 2023, (Exhibit X).<sup>1</sup> The Plaintiff rebutted all of the comments and references to supplemented document on the CD are cited throughout the GOMOR rebuttal (ECF 19-1 at 000035-000090). Therefore, the Plaintiff will gladly provide a copy of the CD at the Court's request if any topics are requested.
6. Whole document omissions exist within the Defendant's AR. These documents should provide "reasonable, non-speculative grounds demonstrating [they were] considered, either directly or indirectly, by the [General]" (*WildEarth, 2009*) and likely fall under RCFC 26, "Duty to Disclose." These documents were submitted for consideration to the Plaintiff's Chain of Command or a sub agency of the Army (e.g. Army Human Research Protection Office, Army Review Boards Agency, etc.) for consideration and decision; they included the Agency's violations and why a personnel action should be remediated. They could reasonably been expected to be in the Defendant's AR **and are listed in bold**. If **bolded**

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<sup>1</sup> Citations were broken down by Folders on the CD and are denoted as "see \_\_\_\_\_ Folder" in the GOMOR rebuttal.

**items** have an assigned “Exhibit” letter than the Plaintiff supplied the Defendant’s RCFC Rule-26 obligation for the Court’s view.

7. Other supplemental documents owned by the Defendant, such as intra-agency and external emails, answered FOIA requests, USASOC Policies, and Agency letters to Congressman are either noted as an Exhibit, or are available for supplement on demand. NOTE: to save time for the Defendant, the Plaintiff supplies *apropos* emails as Exhibits (Plaintiff is willing to supply any others).

#### UNNECESSARY REDACTIONS WERE SUBMITTED IN THE RECORD

8. In the Defendant’s possible attempt to mislead this Court, redactions, not in accordance with RCFC 5.2, exist within the AR presented to the Court (ECF 19-1). The documents cited below are available publicly (online), which makes their redactions baffling and absurdly onerous for the Court; the Plaintiff specifically reprinted these cited excerpts for the Court’s ease of reading them. This was also done because the redactions are material and misleading to the adjudication of this case. Some of the unnecessary redactions excerpts pursuant RCFC 5.2 are as follows:
  - a. The most obvious Non-RCFC Rule 5.2 redactions are represented by the bolded emphasis added in the below paragraphs (from EO M-10-23) and is what is unreadable to the Court in the Defendant’s submitted Administrative Record, (ECF 19-1 at 000157 (emphasis added):

***The purpose of this Memorandum is to help Federal agencies to protect privacy, consistent with law, whenever they use web-based technologies to increase openness in government.** As explained below, the Memorandum builds on OMB’s existing guidance; it calls for transparent privacy policies, **individual notice**, and a careful analysis of the privacy implications whenever Federal agencies choose to use third-party technologies to engage with the public.* (emphasis added)

*This Memorandum applies to **any Federal agency use of third-party websites or applications to engage with the public** for the purpose of implementing the principles of the Open Government Directive. **The guidance also applies when an agency relies on a contractor (or other non-Federal entity) to operate a third-party website or application to engage with the public on the agency’s behalf.** Whenever an agency uses web measurement and customization technologies, the agency should refer to OMB’s memorandum providing Guidance for Online Use of Web Measurement and Customization Technologies.*

- b. More Non-RCFC Rule 5.2 redactions are located at ECF 19-1 at 000618-000635 (again emphasis added to all redacted segments):

### *Section 3: Human Relations*

#### *3.05 Multiple Relationships*

*(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.*

#### *3.06 Conflict of Interest*

*Psychologists refrain from taking on a professional role when personal, **scientific, professional**, legal, financial, or other interests or relationships could reasonably be expected to (1) **impair their objectivity**, competence, or effectiveness in performing their functions as psychologists or (2) **expose the person or organization with whom the professional relationship exists to harm or exploitation.***

#### *3.07 Third-Party Requests for Services*

*When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, **the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.** (See also Standards 3.05, Multiple relationships (#305) , and 4.02, Discussing the Limits of Confidentiality.*

#### *3.08 Exploitative Relationships*

***Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority such as clients/patients, students, supervisees, research participants, and employees.***

#### *3.10 Informed Consent*

*(a) **When psychologists conduct research or provide assessment, therapy, counseling, or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code.***

#### *3.11 Psychological Services Delivered to or Through Organizations*

*(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.*

*(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.*

#### *Section 4: Privacy and Confidentiality*

##### *4.02 Discussing the Limits of Confidentiality*

*(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship*

*(1) the relevant limits of confidentiality and*

*(2) the foreseeable uses of the information generated through their psychological activities.*

*(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.*

*(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.*

#### *Section 5: Advertising and Other Public Statements*

##### *5.01 Avoidance of False or Deceptive Statements*

*(a) Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae, or comments for use in media such as print or electronic transmission, statements in legal proceedings, lectures and public oral presentations, and published materials. Psychologists do not knowingly make public statements*

*that are false, deceptive, or fraudulent concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated.*

*5.02 Statements by Others*

*(a) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.*

*Section 8: Research and Publication*

*8.02 Informed Consent to Research*

*(a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expected duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers.*

*8.04 Client/Patient, Student, and Subordinate Research Participants*

*(a) When psychologists conduct research with clients/patients, students, or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.*

*8.05 Dispensing with Informed Consent for Research*

*Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations, or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability, or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.*



- c. More of these types of redactions were found on communications between the Plaintiff and the 1SFC Inspector General's office (ECF 19-1 at 000585-000593). Notably the Court, and/or its clerks, can copy and paste the content behind these redactions into another document to read them, however that is an unconscionable amount of effort expected to be able to read a piece evidence, especially in view of the fact that the content of the hidden words directly support Plaintiff's claims. For example, the redaction under "Concern #6" (ECF 19-1, at 586) shows that IG was aware that I hadn't received a DA Form 4856 (FLAG notification of the investigation) until February 7, 2023 (ECF 19-1 at 000517); this refutes the 1SFC Investigating Officer's "weaponizing" statement located in his findings (Exhibit R). This activity only further substantiates the Plaintiff's initial complaint and further proves the Defendant's willingness to disregard its own regulations, laws and now their duty to this Court with respect to RCFC rules and legal standards, to achieve its desired outcome.

#### SUPPLEMENTAL EVIDENCE

##### Exhibit

9. Omissions of integral documents submitted by the Plaintiff to Boards have been omitted from the Defendant's AR. Entire documents submitted by the Plaintiff to the Brigade Commander, e.g. an Article 138 redress request on March 31, 2023, the DASEB, and the ASRB, both on June 28, 2024 to name a few. Missing evidence and un-cited, yet identified, material laws, regulations and policies not found in the AR are listed as follows:

**The October 12, 2021 unredacted "Thievery" investigation (ECF 19-1 at 000253 - 000286)** - Un-redacting this document will uncover **who launched the investigation**; regardless, as the Plaintiff's Company Commander, he had to know of its outcome of this investigation prior to filling out FB Form 1462-E on January 18, 2022 (ECF 19-1 at 000513-000514) at the hospital (ECF 19-1 at xxxx).

**The Whistleblower section of the AR is misleading and severely lacking the Plaintiff's Complaints** - Evidence of this is found throughout this case. (See Section "16" of the AR Table of Contents and ECF 19-1 at 000811 - 000832)

- A. The Plaintiff's March 31, 2023 Article 138 redress submission to the Brigade Commander** - The Plaintiff requested redress and notified Commander of violations.
- B. Womack Army Medical Center Patient Bill of Rights (BORs), March 2023** – This published document states, "Patients have the right to receive information about the **individual(s) responsible for**, as well as those providing, **his** or her care, treatment, and **services**. The MTF [Military Treatment Facility] **will inform the patient of the names, and as requested, the professional credentials of the individual(s) with primary responsibility for**, as well as those providing, **his** or her care, treatment, and **services**." (emphasis added)
- C. Plaintiff's June 28, 2024 DASEB submission is not in the AR** - The DASEB's Record of Proceedings (ECF 19-1 at 001520), which occurred, and was adjudicated, after the Plaintiff was separated, states that the "appellant defers to counsel's statement below," and "appellant's evidence is submitted by counsel below." Had it been included in the

Administrative Record, the Court could read the Plaintiff submission. (Defendant's RCFC Rule 26 requirement):

**D. Plaintiff's June 28, 2024 Army Review Boards Agency (ARBA) submission, nor any findings can be found in the AR or in the AMHRR report provided by the Plaintiff -**

Yet, the Plaintiff's administrative attorney was negligently provided information that it may exist (*see* ECF 28 *for more on ARBA Board*).

**E.** Omitted due to duplicity.

**F.** Omitted due to duplicity.

**G.** Omitted due to duplicity.

**H. CoreStrengths Terms of Service**<sup>2</sup> - This is it at the time of order delivery

**I. CoreStrengths Privacy Policy**<sup>3</sup> - This is it at the time of order delivery

CoreStrengths License Agreement with Rhea Racaza – This information could provide information to determine if the Psychologist was a paid facilitator of CoreStrengths.

CoreStrengths License Agreement information.<sup>4</sup> - Had the Psychologist fulfilled the required metrics to ascend from "Provisionally Certified Facilitator" to "Certified Facilitator" which are: 1) "Facilitate a full Core Strengths workshop within 90 days of completing the Core Strengths Certification event; 2) "Facilitate at least three full Core Strengths workshops within 12 months of completing the Core Strengths Certification event," and; 3) "Ensure that at least 30 learners complete and submit electronic course evaluations via Learner Source within 12 months of completing the Core Strengths Certification event," it is unclear what her recompense would be.

**The required Privacy Impact Assessment (PIA) for the Corestrengths use** - This will allow the Court to determine if the required PIA of OMB Section I(B)(6,8,&9) (ECF 19-1, pgs. 721-722) was conducted.

**J. 20180522 "Mobile Device Restrictions in the Pentagon" - This memorandum serves as an example of how the Pentagon post signs to protect its classified facility from the personal electronic devices entering it. Furthermore, USASOC 25-2 states the use of "posted security reminders."**

**K. 20180904 USASOC emailed 20230411 General OPEN DOOR MEMORANDUM.**

<sup>2</sup> Current version of CoreStrengths Privacy Policy is available online at <https://cruciallearning.com/terms-policies/terms/>.

<sup>3</sup> Current version of CoreStrengths Privacy Policy is available online at <https://cruciallearning.com/terms-policies/privacy-policy/>.

<sup>4</sup> Corestrengths Facilitator Agreement is available online at <https://www.corestrengths.com/facilitatorlicenseagreement/>



L. 20210528 1SFC handed 20230118 General OPEN DOOR MEMORANDUM

M. 20221202 LTC Manuel D. Sanchez, Executive Officer (528<sup>th</sup>) sends email re: “Assess the Un-assessed USASOC [HPW] Pilot Priority” – “I’m sending this email to emphasize the priority and urgency of complying with eh HPW team on the Assess the Un-assessed Pilot program. This program has GO [General Officer] visibility and is been (sic) closely monitored....There are specific requirements published by the BDE S3 that are not negotiable. All of us will be apart of this assessment.” (*see empirical timeline*, (ECF 28 - Exhibit CM-2))

N. 20221206 1SFC IG confirms SDI “SDI...is not an ‘Army’ requirement” - Emails between Plaintiff and IG. This email refutes the Defendant statement that SDI was associated with HPW when it stated, “Colonel Brunson...directed all Soldiers in his command,...**to participate in a series of Human Performance and Wellness (HPW) assessments, including completing the Strength Deployment Inventory.**” (ECF 24, at 9) (*see empirical timeline*, (ECF 28 - Exhibit CM-2))

20221212 (1701) Plaintiff emails and thanks the Battalion Executive Officer (BN XO) for Friday meeting (Plaintiff willing to supplement) - This email is a recap of the requested Friday meeting between the BN XO and the Plaintiff to discuss his work to put up signs on the building only to have them taken down by the Company Commander.

20221212 (1719) Plaintiff emails 1SFC IG, thanking them for the in-person meeting that day - (Plaintiff willing to supplement)

**20221214 The unredacted findings of the Plaintiff reported Assault to the Provost Marshall Office** - The Plaintiff later received redacted and unsigned findings (ECF 19-1 at 000533 - 000538) of the alleged reported assault (ECF 19-1 at 000497) conducted by the Battalion CSM. The un-redacted report should be in the Administrative Record as the same CSM abstained from recommending the GOMOR (ECF 19-1 at 001515) and the USASOC Inspector General verbally confirmed that he admitted putting hands on the Plaintiff in that formation.

M. 20221218 Email from USASOC HPW to leaders in the Plaintiff’s unit -This email stated “**The USASOC Directive is still in draft....You guys are way ahead of us on this....**” and was sent to the Plaintiff’s 1SG and the Brigade Physician’s Assistant. (*see empirical timeline*, ECF 28 - Exhibit CM-2). This email confirmed that the Order from USASOC to execute the rollout of the new requirements of the HPW Program had not been issued yet; therefore, the statement in the Defendant’s MJAR, “On November 22, 2022, Colonel Brunson, commander of the 528th Sustainment Brigade, directed all Soldiers in his command, including Mr. Forbes, to participate in a series of Human Performance and Wellness (HPW) assessments[,]” should also state that it was unauthorized. Moreover, the Plaintiff supplied email also contradicted the statement on the OPORD itself, “MISSION. 528th SB (SO) (A) Soldiers will conduct HPW Assessment from 29NOV22 through 31MAR23 IOT meet USASOC and 1st SFC directives[,]” was false. (ECF 19-1, at 000412, box 2).

**N. 20221219 (~1000) The Plaintiff reports assault and falsified OPORD to Hon. Richard Hudson** - After reading the content of the emails from USASOC HPW, the Plaintiff immediately filed a complaint at his Congressman's office in downtown Fayetteville, NC. The content of the emails was highly likely why the safeguards were not in place for the protection of all Soldiers' privacy

20220117 (0607) Ordered to meet with Brigade Company Commander at 1330 (ECF 19-1 at 000508) - Met with him only for him ask the Plaintiff whether the Plaintiff was "assigned or attached to 389<sup>th</sup>?" The Plaintiff answered "assigned" and was dismissed. At 1600 the 389<sup>th</sup> Company Commander informed the Plaintiff that he was to report to Company Commander again; this time at 1600 the following day (December 18<sup>th</sup>) for another meeting. (Plaintiff willing to supplement).

20230118 (~1000) Plaintiff in-person request of Open Door with 1SFC Commanding General - This request to meet with the Commanding General was denied and a formal meeting with 1SFC CSM was entered on the calendar for the next morning at 0900. (Plaintiff willing to supplement).

20230119 (0900) Plaintiff met with CSM Munter - Even though the Plaintiff requested a meeting with General Angle, he was precluded from it because, "the Commander must maintain his objectivity, should this issue reach his level." Plaintiff has never met with any General regarding this case, despite multiple attempts to do so. (Plaintiff willing to supplement).

**P. 20230203 Plaintiff engaged Army Human Research Protection Office (AHRPO)** - This email dialog began what led to the in-person meeting on February 10, 2023. (*see empirical timeline*).

**P. 20230204 Ms. Martha Alvarado, Director, AHROP, Office of the Surgeon General, emailed the Plaintiff back** - The Director referred the Plaintiff to Ms. Brenda S Hanson, PhD, Human Protections Director, Deputy Chief of Staff, Surgeon, USASOC. (*also see empirical timeline*).

**Q. 20230206 Plaintiff filed formal USASOC IG complaint stemming from multiple communications with them since January 19, 2023** - This is a complete omission of the DA Form 1559. Emails provided as proof it was sent and received. (see Exhibit xx)

**R. 20230209 1SFC appointment orders of referred MWPA complaint naming Plaintiff as suspect** - The 1SFC IG referred the Plaintiff's December 13, 2022 assault and counter-productivity complaint to 1SFC Command for action. The Command named the Plaintiff as a suspect in violation of the MWPA. Plaintiff filed a DAIG complaint about this and was informed, on November 15, 2023, there was a case #: ZS-23-0084. (*see Exhibit xx for December IG complaint, and Exhibit for case #*)

**P.** 20230210 Met with Dr. Hanson and LTC Colin Frament of AHRPO - Plaintiff met with Dr. Hanson and LTC Frament, sent an email to them and cc'd Ms. Alvarado that recapped all privacy concerns and violation topics discussed. (*see empirical timeline*).

**P.** 20230223 528<sup>th</sup> Sustainment Brigade Surgeon issues Memorandum for Record - This memo finally codified the directive (after it had been implemented for most of the Brigade) and attempted, but failed to comply with law, to address all of the Plaintiff's concerns about the HPW Pilot rollout (*see empirical timeline*, ECF 28 - CM-2).

**R.** 20230223 1SFC MWPA investigating officer finds Plaintiff guilty of counterproductive / unprofessional behavior - The Plaintiff was found guilty of "weaponizing the IG/Congressional complaint process to protect himself from the 15-6 initiated against him," and this finding was predominantly based on the prior investigation.

20230404 Plaintiff emailed requested PIA for HPW Program or its subcontracted affiliates to Defense Health Agency - This PIA will allow the Court to determine if the required PIA of OMB Section I(B)(6,8,&9) (ECF 19-1, pgs. 721-722) was conducted (Plaintiff willing to supplement).

**P.** 20230404 Plaintiff filed formal complaint with Ms. Alvarado, AHRPO - The Plaintiff sent the entire Article 138 (with attachments sent March 31, 2023) to Ms. Alvarado. Ms. Alvarado put the Plaintiff's forwarded it to Dr. Hanson, USASOC AHRPO Director. (*see empirical timeline*, ECF 28 - Exhibit CM-2).

20230405 Plaintiff notified 1SFC CSM of his intent to seek an Open-Door meeting with USASOC Commanding General - (Plaintiff willing to supplement)

**P.** 20230419 Plaintiff emailed Ms. Alvarado, Colonel Brunson's denial of redress (April 5, 2023) 'for the sake of all members of the unit' - In employing his "core ... roles and responsibilities" as a [Senior] NCO, the Plaintiff, sent the Brigade Commander's redress response to Ms. Alvarado (*see empirical timeline*, ECF 28 - CM-2).

20230420 Plaintiff emailed requested PIA for HPW Program - This PIA will allow the Court to determine if the required PIA of OMB Section I, (B)(6,8,&9) (ECF 19-1, pgs. 721-722) was conducted .

20230501 (0927) Plaintiff requests "point-of-contact info for the USASOC General's Calendar...." - This was received. (Plaintiff willing to supplement)

**R.** 20230428 Command used IG referred MWPA investigation to disparage Plaintiff with his Congressman - This was the investigation that the Plaintiff was named as a suspect in his own MWPA complaint.

20230501 (0927) USASOC General Open Door Request email - Plaintiff never got to meet with the General to address the GOMOR and RFC. (Plaintiff willing to supplement)

202330501 (0948) Plaintiff concurrently notified all subordinate commands of request for Open-Door with USASOC Commanding General - This email was also forwarded, at 1638, to the USASOC command combined email mailbox. (Plaintiff willing to supplement)

20230502 Plaintiff notified USASOC of nine topics of discussion for Command General Open-Door request - The Plaintiff explained that the reason for the meeting was to provide “[r]ecommendations for possible resolutions and saving all involved time and energy.” Response was possible denial of meeting received May 3, 2025 was disseminated to the Plaintiff’s entire chain of command. (Plaintiff willing to supplement)

20230503 Due to USASOC response, Plaintiff placed another request for an Open-Door meeting with any senior leader or staffer under USASOC Commanding General - (Plaintiff willing to supplement)

S. 20230510 (1535) Plaintiff email re: MAJ Racaza credentials request - This email to Ms. Kuntz and Ms. Logan, both of WAMC, with a cc to Colonel Brunson because they asked for his contact information to get the MAJ Racaza’s credentials to determine if the filing of a grievance is necessary. (Plaintiff willing to supplement)

S. 20230510 (1643) 1SG text to Plaintiff of order to a meeting on May 11, 2023 by 1SG Kelly via text - This meeting to inform me that the Colonel had decided to recommend me for a GOMOR was 1 hour and 8 minutes after I had informed him that the hospital staff asked for his contact information.

S. 20230511 counseling form notifying Plaintiff that the Colonel is recommending a GOMOR (ECF 19-1, at) – Plaintiff disagreed with the Counseling and added comments.

20230511 (1321) Sent email notifying USASOC IG of reprisal action – Commander was informed of Hospital Staff’s contact information request and was notified that the Plaintiff was requesting statutorily authorized credentials of the Psychologist. The Colonel immediately had meeting scheduled to notify Plaintiff of his GOMOR recommendation, which was ultimately fulfilled. (Plaintiff willing to supplement)

T. 20230522 (1442), Plaintiff email with 2<sup>nd</sup> request to meet with USASOC personnel, cc: to Brigade Commander notifying him that Womack Army Medical Center (WAMC) staff asked for the his contact information as the Plaintiff was requesting his Psychologist’s credentials (credentials never supplied) pursuant the WAMC Bill of Rights (Exhibit B) - This email shows the timeliness of the 62 minutes between this notification and the Colonel’s adding disrespect as a founded charge in his authorized 15-6 investigation. This email also notified USASOC command and the Brigade Commander of his previously quick (and probable retaliatory) reaction time of having the 1SG schedule the GOMOR counseling on May 10, 2023. This also notified USASOC and the Colonel, of the Plaintiff wife’s intent to seek assistance via notification of the Secretary of the Army (ECF 19-1, pg 574-577).

T. 20230522 (1544), Memorandum for Record, Colonel Brunson - “[Colonel Brunson] approve[d] the finding of disrespect to a senior commissioned officer, pursuant to Article 89,

Uniform Code of Military Justice.” If this is added to the Administrative Record, the Court may adjudge whether this was retaliatory given the Plaintiff’s (or patient’s) request for statutorily authorized request for the “professional credentials of the individual(s) with primary responsibility for ... services.”

**20230616 DA Form 200 delivering CD of all rebuttal evidence** - The CD with a comprehensive and cited list of evidence of the arguments in the plaintiff’s rebuttal was delivered to 1SFC Judge Advocate General’s office and signed for. (Plaintiff willing to supplement)

**U. 20231011 Plaintiff requested Commander’s Inquiry into Relief for Cause** – The commander’s inquiry is absent from the Administrative Record and Plaintiff is unaware of any outcome.

**R. 20231106 USASOC IG notified Plaintiff that 1SFC investigation not used for GOMOR** - “For clarification, the investigative (sic) conducted by 1<sup>st</sup> SFC ... was not considered by the CG in rendering your GOMOR. Are you aware of that?” The Plaintiff can only identify it was used to disparage him to his Congressman.

**U. 20231122 the JAG officer responds to inquiry on Commander’s inquiry into Relief for Cause NCOER** - Plaintiff never heard about it again.

**20240531 A Defendant submission to the Administrative Record was blank** - ECF 19-1 at 1056, an attachment to an email is blank. It can be possibly inferred that it elicited a denial response to some sort of QMP action.

**P. 20240718 New USASOC Policy Protecting Soldier Privacy** - *See* 20230203, 20230204, 20230210, 20230404, 20230419 entries above for related content. The Plaintiff’s concerns over these two program orders were alleviated upon appropriate execution of the new policy that was published from the USASOC Human Research Protection office on this day.

**V. 20241125, DD Form 2648** – Per AR 635-8, the Commander’s responsibility was to ensure this form was signed 120 days prior to the Soldier’s Separation. It is not in Administrative Record.

**W. 20250214, Secretary of the Army Inspector General (SAIG) sent a denial letter to Plaintiff** - The SAIG cites another launched investigation that precludes release of the Whistleblower reprisal investigation. This investigation, whether it proves reprisal or not, likely has information in it that may bolster the Plaintiff’s case.

**X. Transmittal Record, DA Form 200 signed, June 22, 2023** - The Plaintiff dropped off a CD with all the referenced exhibits in the GOMOR Rebuttal in folders on it

**Y. Entrapment Counselings and counter reaction attempts** - The Plaintiff has a chronological graphic timeline (ECF 28 - Exhibit CM-1).

*(4) Provider Information. Patients have the right to receive information about the individual(s) responsible for, as well as those providing, his or her care, treatment, and services. The MTF will inform the patient of the names, and as requested, the professional credentials of the individual(s) with primary responsibility for, as well as those providing, his or her care, treatment, and services. (emphasis added)*

- Z. The REDACTED PMO Report** - This redacted report serves only to produce questions about the veracity of the investigation and whether the PMO took the complaint seriously from the beginning. .

#### THE INSPECTOR GENERAL & EQUAL ACCESS TO THE WITNESSES

10. The Plaintiff has not had equal access to the witnesses in any of the investigations to include the USASOC Whistleblower and SAIG investigations, which would likely be necessary and relevant for adjudication by this court and does not constitute any privileged relationship. The requested investigative reports are not informal evaluations or working papers of opposing counsel, they are in fact, formal Inspector General investigations to adjudicate if retaliation and reprisal occurred and noting other wrongful violations in order to guide the Defendant. They are relevant, necessary and lack Defendant or Defendant Counsel privilege in a court of law; in fact:

*Federal inspectors general (IGs) are authorized to combat waste, fraud, and abuse within their affiliated federal entities. To execute their missions, offices of inspector general (OIGs) conduct and publish audits and investigations ....<sup>5</sup> (emphasis added)*

11. Also, as a *purported* self-regulating and impartial ‘watchdog’ representative of the citizenry, or stated a different way:

*Statutory IGs—established by law rather than administrative directive—are intended to be independent, nonpartisan officials who aim to prevent and detect waste, fraud, and abuse in the federal government.<sup>6</sup>*

12. The Plaintiff filed a complaint with SAIG on This letter was supplied to opposing counsel on February 25, 2025. Yet, the Defendant made the argument (ECF 24, at 18) after denying the requested findings (ECF 20 at 8) for the benefit of the Court.
13. There is a high probability that there exists information in those investigation that would speak to the Plaintiff’s claims. This is true whether the information contained therein

<sup>5</sup> Ginsberg, Wendy & Michael Greene *Federal Inspectors General: History, Characteristics, and Recent Congressional Actions*, (June 2, 2016) online at: <https://sgp.fas.org/crs/misc/R43814.pdf>.

<sup>6</sup> *Statutory Inspectors Generals in the Federal Government: A Primer*, Congressional Research Service, November 12, 2023 <https://sgp.fas.org/crs/misc/R45450.pdf>.



supports reprisal or not, the fact-finding portion of the investigation could yield proof of any of the plaintiff's claims, e.g., retaliation, assault, privacy, and regulatory violations, etc. Therefore, there should be no objection for their assessments, calculations or findings to be included in AR in this case for this Court; after all, it is public knowledge that the Defendant's Commanders rely on their IGs informal and formal guidance on a daily basis. Yet the Defendant notified the Plaintiff of its "attorney client privilege" and its "deliberative process privilege" in the letter (Exhibit W). Case law suggests those claims of 'privilege' belong in this venue and should be viewed by both parties:

*By rule, a party withholding 'information otherwise discoverable by claiming that the information is privileged' must, at a minimum, '(i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced ... in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.' RCFC 26(b)(5)(A), - 3rd Eye Surveillance, LLC, et al v. United States, et al (Cl. Ct. Case #15-501C, August 27, 2021).*

14. Moreover, at its discretion, the court can opt to issue a protective order for the sequestration of the documents from the public.

#### CONCLUSION

15. It should not be lost on the Court by now, that the Plaintiff has, from day one of this case, tried to remediate the Brigade Commander's invasive violation of multiple regulations, laws and Executive Orders in his singular emailed order; unfortunately, the Defendant: misperceived his requests for remediation, failed to remediate it on his behalf via his unit as well as agency complaints, and/or became entrenched in their decisions on the Plaintiff's Chain of Command recommendations vs. common-sense duty to follow the law. It is the Plaintiff's hope that he will not have to emulate the effort, time and money spent in a recent military pay case wherein a federal employee was subjected to an long-standing adverse personnel action:

***MR. DAVIS: ...then there's also the issue of whether the government on remand might or might not choose to pursue this issue and might allow Mr. Harrow, who proceeded for 11 years seeking \$3,000 of compensation and interest, to just get his day in court in the Federal Circuit on the merits.***

***JUSTICE GORSUCH: It -- it is extraordinary, the lengths to which this case has gone, seven years waiting and then the email and all that, ... Harrow v. Department of Defense (SCOTUS 2024, 144 S.Ct. 1178 , 218 L.Ed.2d 502) (Oral Arguments- March 25, 2024)***<sup>7</sup>

16. The Department of Defense lost.....Today, all of the senior command team members that were active in pursuit of damaging the Plaintiff in this case, except the central figure, the

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<sup>7</sup> A recording of the hearing is available at: <https://bit.ly/433MiD8>

Brigade Commander, has retired within nine months of one another (from September, 2023 - June, 2024). It has always been the Plaintiff's desire to do the same at 20 years of service.

17. To save time for the Defendant, the Plaintiff, and the Court, the Plaintiff respectfully requests the Court to allow the Defendant to supply the *apropos* items listed in *ad nauseam* in this Motion to Supplement the Record. This pertinent evidence is crucial for the Court's visibility of pre-textual and intermixed events for this case to be fairly adjudicated by this Court. The Plaintiff, *pro se*, reasonably trusts the Court in this regard; in contrast, the Defendant, in two years, has severely damaged the trust it had built with the Plaintiff over the first 16 years of his career as shown in their competitively prejudiced Administrative Record submission.
18. For the myriad reasons presented, the Plaintiff respectfully requests the Court DENY the Defendants Motion for Judgment on the Administrative Record and grant the Plaintiff's Motion to Supplement the Record.

May 21, 2025

Date

614 Northampton Road  
Fayetteville, NC 28303



Signature of Plaintiff

Cell: (910) 336-5966  
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<i>WildEarth Guardians v. Salazar,</i> 670 F. Supp. 2d 1, 6 (D.D.C. 2009).....	1, 2

**SUPPLEMENTED STATUTES, RULES, REGS, POLICIES, etc. (not found in Defendant's list)****Rules.**

RCFC 5.2 .....	3
RCFC 26 .....	2, 8

**US Army Regulations.<sup>1</sup>**

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<sup>1</sup> Army Regulations are available online at: <https://armypubs.army.mil/>.

**US Army Special Operations Command Policies.**

USASOC Policy 19-15, General Open Door Policy ..... (ECF 27, Exhibit K)  
USASOC Policy 24-14, Human Research Protection Program .....(ECF 27, Exhibit P)  
1SFC Policy 1, General Open Door Policy ..... (ECF 27, Exhibit L)

**Hospital Patient Bill of Rights**

WOMACK Army Medical Center Bill of Rights.....(ECF 27, Exhibit B)