In the United States Court of Federal Claims

MICHAEL J. FORBES, *pro se.*	)	
	)	
Plaintiff,	)	No. 1:2024-cv-01953
	)	
v.	)	REPLY TO DEFENDANT'S
	)	UNTITLED & UNREFERRENCED
	)	OPPOSITION TO PLAINTIFF'S CROSS MOTION
	)	FOR JUDGMENT ON
THE UNITED STATES	)	THE ADMINISTRATIVE RECORD
Defendant.	)	(Judge Hadji)

REPLY TO THE DEFENDANT'S UNTITLED AND UNREFERENCED OPPOSITION (ECF 32) TO PLAINTIFF'S CROSS-MOTION FOR JUDGEMENT (ECF 28) ON THE ADMINISTRATIVE RECORD

1. The Defendant did not title any section of ECF 32 as any variation of 'RESPONSE IN OPPOSITION TO PLAINTIFF'S CMJAR' and there are no references to 'ECF No. 28,' 'ECF 28' or otherwise, within the document. Therefore the Plaintiff treats ECF 32 as serving to reply to Plaintiff's responsive opposition (ECF 28) to the Defendant's MJAR ***and*** as responsive opposition to the Plaintiff's CMJAR (ECF 28). Thus, this is entitled as a "REPLY…."

LACK OF DUE PROCESS AND ITS RELATIONSHIP TO SEPARATION

2. Under the current regulatory structure of the US Army and our Constitution, all tenured enlisted soldiers have the right to have mandatory Administrative Separation Boards (ASB).[1] In cases of involuntary administrative separations, however, there is one significant change that was contrived as an alternative or exception, the Qualitative Management Program (QMP) Board was established in 2005 (*see* ECF 33, Exhibit S01).[2] This exception is triggered when a Colonel recommends a GOMOR to a General and the General files a permanent General Officer Memorandum of Record (GOMOR) on senior NCOs (Non-Commissioned officers of E-6 (SSG) and above). This shifts the separation authority from Commanders to the QMP Board.

3. These two arbitrary decisions trigger an automatic QMP Board consideration which shifts the typical separation decision from the Colonel,[3] through a General, to a board;[4] which on its face are an arbitrary[5] decisions, the capricious[6] nexus of which will be revealed later. Unlike a properly administered ASB, this relatively young QMP Board, does not hear oral or written testimony in defense of dutiful past service contrary to the adverse documents; in fact it presumed that any "adverse documents…are properly filed, administratively correct and filed pursuant to an objective decision by competent authority."[7] Nor does it permit the Senior NCOs affected to present a defense that criticizes other Soldiers.[8] The QMP Board only permits evidence to show rehabilitation (based on an assumption of guilt). Is this fair?

MORE QUESTIONS ABOUND

4. Isn't the Colonel's and the General's arbitrary and subjective decisions to recommend and permanently file a GOMOR for the Plaintiff, instead of directly adjudicating an alleged Article 89 offense[9] himself, the proverbial 'fork in the road?' This question begets more questions: 'doesn't this arbitrary decision result in the denial of the Plaintiff's presentation of a defense in a QMP Board?;'[10] 'doesn't it become a glaring concern if the Plaintiff proves his Commander's violations of law caused the controversy?;'[11] 'isn't it more glaring if the Plaintiff can prove the aspects of a Special Defense that are written directly into Article 89 itself?;' 'are all officers aware of this?;' 'if so, when are Officers instructed on this decision point?;' 'if a Commander realized he violated laws, could that change a Colonel's' 'mood' or 'behavior' and make capricious, a punishment decision?' All good questions. The ABCMR provides illumination:

> *His one mistake resulted in him receiving a GOMOR, the only derogatory mark on nearly 13-year active duty career. The GOMOR issuing authority* ***is now*** [arbitrary] ***requesting*** *that it be removed from his record because* ***it was never intended*** [capricious] ***to end the applicant's career,*** *especially six years, another combat deployment, and three* ***'Among the Best'*** *rated NCOERs later.*[12] (emphasis added)

Noting a simple case difference, the Plaintiff did not err in his request for the required statutory information, whereas the above Soldier's plight was the result of his "violating the state's implied consent law."[13] The above statement indicates the inextricable subjective nature included within the unconstitutional and contrived procedural structure of the QMP. A Colonel's / General's choices make it arbitrary, motive makes it capricious. Both require adjudication in a proper venue as both officers could make the separation decision themselves.

THE QMP's CIRCULAR APPROPRIATENESS

5. The center-of-gravity of the Plaintiff's Complaint is lack of due process afforded the Plaintiff in this case. The Plaintiff did not, prior to his separation decision, have "[s]ome kind of hearing…to present his side of the story" (*Cleveland Board of Education v. Loudermill* (1985), 470 US 532, 546) to counter the allegations of disrespect and counterproductivity. Moreover, the Plaintiff brought this issue to the attention of the QMP Board (ECF 19-2 at 001073), which ignored it. Yet, its self-purported explanation of its mission in its Q &A flyer states otherwise:

> *The QMP was established* ***to ensure*** *Regular Army and U.S. Army Reserve Active Guard / Reserve (USAR AGR)* ***NCOs in the rank of SSG through CSM serve in a manner consistent with good order and discipline, and that those serving in positions of authority to perform in an exemplary manner, it is appropriate to have policy designed to enhance the quality of the force****. Such policy stresses the importance of the U.S. Army NCO Corps by* ***ensuring only NCOs who consistently maintain high standards of performance, efficiency, morality, and professionalism are permitted to continue to serve on active duty.*** (emphasis added)

Ironically, the very board, contrived of Secretarial Plenary Authority, was adjudicating standards 'without both sides of the story' in an unconstitutional forum.

6. This begs another question, 'who said this ***was appropriate***?' In fact, it is NOT appropriate for an agency, or sub-agency, to organically craft its own unconstitutional right to subjectively and separately deny a subset of tenured Soldiers, due process. ***It is simply not appropriate for any agency to assume authority that two separate branches of our Government, the United States***

Congress (through an act of Congress) and the President of the United States (via an Executive Order), don't have. This fact is likely why the Plaintiff's direct appeal to the QMP Board was patently ignored: the QMP Board's acknowledgment of its own lack of due process could undermine the very authority it was provided, and thereby expose the unconstitutionality of its history of existence. After all, some important person long ago decided (in 2005) that treating Senior NCOs as 'at-will' employees of the officers they serve is 'appropriate.' The 'jig would be up' and that can't happen at any cost. Let's delve deeper, shall we.

THE INTELLIGENCE PROFESSIONAL's DEEP DIVE BEGINS

7. To preface this argument, the lack of due process claimed, is multifaceted and given the Defendant's repeated arguments to the contrary may be a bit murky. The Plaintiff wishes to clear the way for the Defendant to properly compartmentalize his due process complaints. The Plaintiff feels "[l]ike two ships passing in the night, the government steers this litigation in a different direction"[14] as it "maintains [the Plaintiff was] afforded [his] applicable rights and processes due."[15]
8. In fact, let's tackle the 15-6 investigation[16] first. The Plaintiff agrees with the Defendant on *only one of its assessed characterizations* of the Plaintiff's claims (and it is an important one). The Defendant characterized (not quoted) the Plaintiff's arguments pertaining to the *ex parte*[17] 15-6 investigation as "a mere ruse" (ECF 32 at 6). This is an absolutely true assessment; the investigation lacked due process. In fact, any reasonable citizen of our country would likely be concerned about an investigation of this poor quality were they are "invariably found guilty."[18]
9. Now onward to the bigger matter with farther reaching effects. The Plaintiff must clarify an argument that the Defendant largely neglected and continues to redefine; it is that the Plaintiff

did not receive due process AT ANY TIME THROUGHOUT this separation. This must be again stated to elucidate it as the capstone issue that it is. Let's begin with a rights discussion.

LOUDERMILL RIGHTS

10. It is interesting to note that the Army Judge Advocate General's *General Administrative Law (GAL) Deskbook* has references to *Garrity* rights[19] and *Weingarten*[20] rights, but no reference to *Loudermill* rights. This Plaintiff contends that this is no accident, as it plainly states:

> *A. The Constitution.*
> *1. Bill of Rights (e.g., Fourth,* ***Fifth****, and Sixth Amendments)* ***generally inapplicable to military administrative proceedings.***
> *2. When challenged in court on alleged denial of constitutional due process (Fifth Amendment),* ***military position is there is no constitutional life, liberty, or property interest affected by our administrative actions***.[21] (emphasis added)

The Supreme Court disagrees, hence the commonly used name '*Loudermill* Rights' and the existence of mandatory ASB procedures in Ch. 2 of AR 635-200 (used prior to 2005).

11. Now to further obfuscate Plaintiff's rights to an ASB, the Defendant stated:

> *…[the Plaintiff] seeks the inclusion of documents related to broader allegations of reprisal, injustice, or Privacy Act violations, the proper venue for doing so was the ABCMR*."

The only advantage of this for the Defendant is that the ABCMR is a venue that lacks any accountability of any transparency it subjectively publishes,[22] but it is not the only proper venue (ECF 33 at 7, para. 16). The right of a public federal employee to due process is instructed, it:

> *…is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in* [public] *employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards*. (*Loudermill v. Cleveland Board of Education*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985))

12. However the QMP as originated via revisions to AR 635-200 in 2005, has another advantage. It only provdes the appearance of due process, not actual due process protections. This paves the way, or 'stacks the deck,' for the Army 'to win' against any Senior NCO that disagrees with an

Officer, at all costs, even at the cost of Soldiers' Constitutional rights. This can be seen here in the denial of *Loudermill* requirements: notification and hearing before an ASB in 2005:

> *The provisions of this regulation pertinent to … **notification of separation recommendation** (see chap 2, sec I), and **a hearing before an administrative separation board** (see chap 2, sec II) **do not apply to involuntary discharge under this chapter*** (emphasis added).[23]

It has since been revised, whereas only the last clause of the sentence is modified, but still serves simply to further prove the Plaintiff's focus point on the QMP Program, it denies ASBs:

> *… and a hearing before an administrative separation board do not apply to involuntary discharge resulting from QMP selection (see chap 2, sec II).*[24]

Therefore, constitutional protections referred to as the *Loudermill* rights[25] are ***expressly*** denied to tenured Senior NCOs "resulting from QMP selection."[26] Notably, cases can get stale as well.

STRATEGIC GASLIGHTING

13. The 2005 birth of QMP created this opportunity for corruption by rewriting its internal rules based on plenary authority, without regard to case law, or the Constitution. Nonetheless, 'gaslighting' occurred as identified in the GAL and cited QMP pamphlets, when in fact;

> *the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures…. 'Property' cannot be defined by the procedures provided for its deprivation any more than can life or liberty.* ***The right to due process "is conferred, not by legislative grace, but by constitutional guarantee."*** (*Loudermill*, 1985, emphasis added).

It is the reasonable expectation of ongoing government employment that creates the property right, which necessitates the need for due process; and the Plaintiff HAS NOT been heard.

14. This concept 'bubbled' to the surface and became apparent in this case for six simple reasons: 1) the Plaintiff has a tenured history of being mature and professional; 2) the Defendant ignored our Constitution while breaking laws and regulations; 3) the Plaintiff can read and critically think which makes him difficult to 'gas-light;' 4) the Plaintiff is convinced he was denied due process in the cover up of violations, 5) the Defendant has shown it will do whatever it takes to

win; and; 6) the Plaintiff won't give up this battle until his right to a fair adjudication is rendered. In fact:

> *The **right to be removed only for just cause (and not arbitrarily or for a reason that is contrary to the public good**) is distinct from due process. However, **it is that right to just cause that gives the employee a property interest in the job**, which triggers the constitutional requirement that the Government follow due process in the removal of that property interest.*[27](emphasis added)

AN UNCONSTITUTIONAL ARMY 'BABY' IS ALL GROWN UP

15. Metaphorically, the Army is functioning as a 'king' over its kingdom, and with the Generals as 'lords over their fiefdoms,' (obviously with the king's backing); history is replete with evidence that, if you question the 'lord' you are questioning the 'king!' (i.e. HOW DARE YOU!) This metaphor is applied by looking at the king's edict (the enlisted separations regulation) and how the lords decide to enforce it through the king's formal decrees (Ch. 2, 'ASB' vs. Ch. 16-1, 'QMP')[28]. The Plaintiff can show that the metaphorical 'king' (the Army) has fathered a 'bastard child' or 'baby' (the QMP Board or "show trial"[29]) with its 'mother,' a "statute"[30] ("Title 10 USC 1169;" ECF 19-2 at 001057),[31] which is Secretarial Plenary Authority[32] (bounded by Supreme Court guidance).[33] The establishment of the 'baby,' the QMP Board (the 'king's court') occurred on June 6, 2005, when AR 635-200 was republished (the 'edict') and the QMP was given its own Chapter (Ch.19, a 'formal decree' to adhere to). By doing this the 'king' violated the "equal protection of the laws" (14th Amendment) and any implied equal protection under the 5th Amendment, because the QMP is only applied to tenured Senior NCOs given administrative negative personnel actions.[34] (Ch. 19). The 'king' has now successfully hidden the unconstitutionality of this 'baby' or 'king's court' from his subjects for twenty years.
16. This young 'bastard child' (the QMP Board) was active, but not overly active, in its formative years until it was approximately 9 years old. Then the Army issued a Directive entitled

"Qualitative Management Program"[35] as it began a drawdown. The Generals only began implementing it in in earnest circa 2014. Since then, thousands of SSG (E-6)[36] and an unknown amount of higher ranking Senior NCOs (up to E-9)[37] have been separated via QMP.[38]

17. It is at this point, a reasonable person would have questions: "How was this allowed to occur under the protection afforded by the 5th Amendment?;" "How did Generals (the 'lords') get this authority to simply recommend an administrative permanent filing of a GOMOR, knowing it triggers referral of Senior NCOs to the QMP Board (the 'king's court') where a defense is expressly disallowed?;[39] 'who decided that ASBs are not permitted?;[40] After all, due process:

> *...is [the] procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law*."[41]
>
> *In that same decision, Justice Felix Frankfurter wrote: "Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of Rights.* ***That a conclusion satisfies one's private conscience does not attest its reliability.*** *The validity and moral authority of a conclusion largely depend on the mode by which it was reached.* ***Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness.****"* (Id. at 171 (Frankfurter, J., concurring)).[42]

THE ARMY'S DIRTY LITTLE SECRET DEFENDER

18. In a singular action, the Army established the QMP Board, and concurrently subverted the constitution by relying on a vague congressional statute, 10 USC § 1169 that provides Secretarial Plenary Authority as underpinning to do so. It vaguely states (emphasis added):

> *No regular enlisted member of an armed force may be discharged before his term of service expires, except—*
> ***(1) as prescribed by the Secretary concerned****;*
> (2) *by sentence of a general or special court martial; or*
> ***(3) as otherwise provided by law****..*

June 6, 2005 is a date that'll live in infamy; the Army's adaptations to AR 635-200 autocratically and unilaterally nullified the settled landmark[43] case of *Loudermill*: it denied "

American [Soldiers to] receive a merit based civil service rather than a corrupt spoils system,"[44] a corrupt system of governance long forgotten in our U.S. history.

19. Even the ABCMR has a realistic view of the QMP:

> *Apparently, the QMP* ***only performed a surface review****.... SSGs of the applicant's caliber who put themselves in harm's way so selflessly and often. Although the QMP's process of flagging records, putting them into piles of "GOMORs" versus "Non-GOMORs," and then expelling the GOMORs is technically the process* ***it is not the most effective manner to determine who is fit for continued service. There should have been a more in-depth analysis of his record****.*[45] (emphasis added)

HOW BIG IS THIS CONSTITUTIONAL QUESTION?

20. It is immensely damaging to the Army, as some of the separated are likely dutiful Senior NCOs (as above), which undermines the stated purpose of QMP. Regardless, all referrals of negative personnel actions are arbitrary, likely capriciously, and trigger a process contrary to our Constitution. This fact screams the next pragmatic questions, 'how many QMPs, across all branches have occurred since 2005?;' 'how many military service members have been denied their *Loudermill* rights due to this misapplication of law to codify a process that has become normalized?;'and 'what role does the Judiciary play in all of this?'

20. …The *Loudermill* case, clearly holds that the 5th Amendment is not unseated by an Act of Congress; it is the 'just cause, property rights and due process' conferred on federal employees via the Constitution, which cannot removed by Congress, nor the President. In fact, the Supreme Court codified its "instruction"[46] on removals from public civil service (*Loudermill* at 541). Moreover, the Merit System Protection Board explains it best:

> *While a legislature can decide whether to grant property,* ***the Constitution determines the degree of legal process and safeguards that must be provided before the Government may take away that property.*** *The U.S. Supreme Court has repeatedly held that, when a cause is required to remove a public employee, due process is necessary to determine if that cause has been met.* ***Neither Congress nor the President has the power to ignore or waive due process.*** (emphasis added)[47]

If neither Congress (by way of enacting a law) nor the President (by way of an Executive Order) can nullify a Soldier's constitutionally granted *Loudermill* Rights, how did the Army accomplish this? After all, the Army is merely a sub-agency of one of the three major separations-of-power in our country, thereby powerless in such regards.

THE DEFENDANT'S FLAWED ANALYSIS OF QMP SUBMISSIONS

21. Contrary to the Defendant's opposing assertion, the Plaintiff addressed the denied due process:

> [The Plaintiff] *has* (sic) *multiple opportunities to present his side during the investigation, and, indeed, submitted a sworn statement. After receiving the GOMOR, he submitted extensive rebuttal through counsel. AR 733-734. He was later notified of the QMP action and* ***again submitted rebuttal matters for the board's consideration***. (ECF 24 at 29, emphasis added)

The Defendant reiterated it below:

> *He does not allege that the investigation failed to meet the procedural requirements of Army Regulation 15-6,* ***nor does he contend that he was denied the right to respond to the allegations or to present mitigating information****….and he…* ***filed his rebuttal before the QMP board*** *rendered its decision.* (ECF 32 at 11, emphasis added)

Regarding the 15-6 investigation, the plaintiff clearly and extensively argued against its procedural flaws in his GOMOR rebuttal (ECF 19-1 at 73-78) and related filings (ECF 28 at 3 & ECF 19-1 at 000149 & 000108). Although important, the investigation's issues do not encapsulate the entirety of the due process issue.

22. The bigger issue appears when the Plaintiff refuted that Defendant's assertion that the QMP Board itself allows for due process (ECF 28 at 39, para. 87) and that the Plaintiff was informed by the QMP Board of this fact (ECF 19-2 at 001073, para. 2). Unfortunately, much of the evidence in the motion for supplementation (ECF 27) and Cross Motion MJAR (ECF 28) squarely "criticizes or reflects on the character, conduct or motives of other Soldiers" which makes it inadmissible before the QMP. A core component of *Loudermill* rights is a soldier "opportunity to present reasons, either in person or in writing, why proposed action should not

be taken,…an opportunity to present his side of the story" (*Loudermill*, at 546), but the Army's established QMP process denies this right.

THANKFUL FOR FIREPROOF UNIFORM OPTIONS

23. The Defendant's repetitive 'gas-lighting' of the Plaintiff's refusal to engage the ABCMR and its other *ad hominem* 'flawed thought process' of its filings, and are at a minimum, monotonous. But it does have its value for the Defendant as yet another attempt to accomplish its goal (to win at all cost). After all, the duplicitous effort spent thus far, plus more effort and time spent waiting years in ABCRM's unscheduled system,[48] enables cases to become stale or rot.

24. Now, the Plaintiff need not highlight this court's case law history, which is riddled with dismissed cases of Complainants that missed the hard and fast six-year statute of limitations due to misplaced or misguided understanding of exhaustion doctrine. Nor should it belabor the massive case load of the ABCMR.[49] That said, the Defendant completely missed one of the Plaintiff's main targets, the misfeasance of the Defendant (including command leadership, IG and, generally, the agency as a whole) to acknowledge the due process issues presented. This is evident in its repeated attempts to mislead the Court to agree that his defense was permitted to be submitted to the QMP Board. The Plaintiff's tenured and unblemished status, at a minimum[50] should have provided an opportunity for a defense; an opportunity offered by an ASB in which he had (outside the QMP process) a vested right. The repeated lack of acknowledging this due process concern indicates a long-standing 'gas-lighting' operation that reaches farther than the bounds of this case. In fact, it touches every Soldier who has suffered by way of a QMP Board.

25. Let's first highlight some of the localized gas-lighting of this case:

> *If [the Plaintiff]* ***wished to include [to the QMP Board] additional documents, [the Plaintiff] had the opportunity to do so****… He cannot now supplement the record with materials he failed to submit when he had the procedural means to do so* (ECF 31 at 10).

> *... the bulk of Mr. Forbes's motion* ***seeks to add documents that were in his possession or readily available to him at the time of the Army's decision, but which he failed to submit during the two formal opportunities afforded to him: his rebuttal to the GOMOR and <u>his submission to the QMP Board</u>*** (ECF 31 at 17, emphasis added).
>
> *...After the GOMOR was issued, Mr. Forbes* ***had a chance to submit materials in a rebuttal****, but like in his MJAR, he instead proffered his subjective belief that the investigation and was an illegitimate retaliation of his previous MWPA claims regarding alleged Privacy Act violations committed by the Army as it related to a psychological screener* (ECF 32 at 6, emphasis added).
>
> ...[the Plaintiff] ***seeks the inclusion of documents related to broader allegations of reprisal, injustice, or Privacy Act violations, the proper venue for doing so was the ABCMR. That board provides a statutory forum under 10 U.S.C. § 1552 where a service member may submit new evidence and seek equitable relief outside the confines of this Court's limited review.*** (*See Def. MJAR at 17, and* ECF 31 at 18, emphasis added).

FARTHER REACHING?

26. It is the Defendant's overuse[51] of its desire for the Plaintiff to engage ABCMR, its factual misrepresentation of the QMP regulation, and its misplaced belief that the Plaintiff should have engaged the ABCMR first, that undermines its arguments. This is exemplified in the reiteration of the latter quote (above) in two filings. This reiteration immediately indicated to the Plaintiff that the Defendant needed significant clarification of at least one of the Plaintiff's due process arguments claimed (ECF 5 at 4, para. 22). And, this idea is in QMP notifications and flyers.

27. It is not just the due process lacking in the 15-6 investigation stemming from the causal violation that is 'farther reaching.' It is the due process denial of the 5th Amendment rights during separation that all Soldiers that are subjectively under QMP attack experience. Neither due process denial has the Plaintiff been able to defend in any venue to date. In fact, that is exactly why the Plaintiff exercised his right to 'bee-line' for a judicial outcome. He attempts to remediate the wrongful administrative separation quickly. Further explaination is found by pointing out a 20-year-old fallacy that the Defendant states is "established procedures:"

> *…a* ***Qualitative Management Program board decision*** *to separate [the Plaintiff] from service* (ECF 32 at 5, emphasis added)…. *separated* [the Plaintiff] ***under established procedures*** *following a substantiated command investigation, a GOMOR, and a relief-for-cause NCOER.* (ECF 32 at 16, emphasis added).

To be clear, the 20-year fallacy is the Defendant's "ESTABLISHED PROCEDURES!"

THE 20 YEAR FALLACY

28. The U.S. Merit System Protection Board clarifies it better that the Plaintiff ever could:

> ***Public employers*** *– whether state or* ***Federal*** *–* ***are covered by the due process guarantees of the U.S. Constitution***[52]*…. However,* ***a decision reached by the U.S. Supreme Court is*** *more than instructive – it is* ***an instruction***.[53] *When the Supreme Court reaches a conclusion based on the requirements of the Federal Constitution, that holding should be considered when setting laws, regardless of whether the legislature in question is state or Federal. While Loudermill was a decision involving a state employer, both the Supreme Court and the Federal Circuit have explicitly recognized that the Constitutional due process rights described in Loudermill apply to the Federal civil service.*[54]

Yet the Defendant deems it "appropriate" (ECF at 001057) in its QMP FAQ publication. Therefore, the Agency's (Army as a sub-agency to the Defendant) reliance on its self-purported determination of 'appropriateness' is 'gaslighting.' By doing this, it becomes a normalized fallacy thrust upon those that served over the past two decades.[55] To wit, the Army unconstitutionally undermined the 5th Amendment when it published Ch. 16-11 of AR 635-200 on June 6, 2005; since then, the Defendant used it to separate Soldiers under its Secretarial Plenary Authority. The Army's autonomous establishment of the Chapter via its subjective interpretation of a law, and its self-published 'appropriateness' of it, does not follow Supreme Court instruction of *Loudermill*; therefore, it is a violation of every affected Soldier's *Loudermill* Rights, which is naturally rooted in their constitutional rights.

29. How did they accomplish this? Today, three quotes written in the 2021 version of AR 635-200 handle that burden, one of them has survived since the beginning of the QMP Board's establishment, as seen below from this quote from its 2005 version:

> *The provisions of this regulation pertinent to counseling and rehabilitative transfer (see para 1–17),* ***notification of separation recommendation*** *(see chap 2, sec I),* ***and a hearing before an administrative separation board do not apply to involuntary discharge resulting from QMP selection*** *(see chap 2, sec II)* (AR 635-200, Ch. 16-11, b. (10), June 28, 2021).[56]

The next two quotes are more recent additions to it:

> ***There are no appeal provisions because every NCO will be afforded complete due process prior to the NCO evaluation board convene date*** *and consideration for continued active service* (AR 635-200, Ch. 16-11, b. (8), June 28, 2021).

When exactly will this "complete due process" be provided with the Plaintiff under a gag order:

> *Submit matters to the board president addressing the NCO's potential for continued service. These matters may include letters of support from third parties.* ***Correspondence that criticizes or reflects on the character, conduct, or motives of any other Soldier will not be provided to the board*** (AR 635-200, Ch. 16-11, g. (2), June 28, 2021).

The Army's self-purportedly **'*appropriate*'** and self-derived **'*established procedures*'** is the '20-year fallacy' that allows Commanders/GCMCAs to subjectively separate tenured Senior NCOs at-will. They can kick and scream all they want but no one will hear them. They win.

SAFETY FIRST; QUESTIONS FLYING. STEP BACK! FIRE IN THE HOLE!

30. There are natural questions for the Defendant and this Court, flying at the speed of shrapnel from the impact point of this constitutional attack: 'whose ***established procedures*** took away constitutionally derived rights for a subjective (arbitrary) subset of Army Soldiers?;' 'how was this permitted to happen?;' 'why hasn't it been stopped?;' 'how many Soldiers have been denied their rights from this arbitrary action since 2005?;' 'where are the historical legal review checks prior to this occurring?;' and 'how many Soldiers lost retirements this way?' Everybody ok? Sound off!

A CONTRACT AND A CLEARANCE

31. Separately, the Plaintiff has recently noticed a trend after losing the third government employment opportunity because of a lingering clearance issue that existed prior to separation and due to this case; the adjudication of his clearance was left open and a "loss of jurisdiction"

was attached to it. Hence, the Plaintiff 'bee-lined' for an outside federal venue for an "adjudicative fact"[57] ruling under the Military Pay Act and APA, as a *pro se* litigant as this is highly damaging. His indefinite contract (ECF 001336-001341) gave him a reasonable expectation of ongoing government employment; and therefore a 'property interest;' and if there is a 'property interest' then there exists 'due process' implications; and if procedural protections are required then the Defendant had to give him an Administrative Separation Hearing; and he could have been retained; and he could still have his clearance adjudicated.

32. The supreme court case of *Perry v. Sindermann*[58] explains the 'property interest' when it quotes *Board of Regents v. Roth*, ante p. 408 U. S. 564:

> *A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hear*ing. Roth, supra, at 408 U. S. 571-572, 577.

To explain this mutual understanding in the Army, all Soldiers are aware of the explicit and inferred expectations and understandings of their superiors' conduct, which is founded on federal law mandating "exemplary conduct" from the officer corps.[59] It is a fundamental aspect of military discipline and professionalism. The ramifications for failures are stated in all enlistment ***contracts*** *as well*, which necessitates separation safeguard protections.

PRE-FINAL ARGUMENT OPERATION PREPERATION: ORIENT THE MAP

33. As the eternal battle wages on between evil vs. good, oppressor vs. oppressed, dictator vs. free republic, it now morphs into what has transpired here, Officer vs. tenured Senior Sergeant. This battle should probably end on the same note its initial threat of its inception. The stage was set for this battle of rules vs. consequences with the Colonel's initial verbal salvo that took the form of a threat of career death. That day, November 30, 2022, the Plaintiff was asked "why do

you want to die on this hill" (ECF 19-1 at 000821) and the Plaintiff immediately stated and formally reiterated later that day, "I don't want to 'die on [any] hill" (ECF 19-2 at 001431).

34. The battle that was later launched (via clandestine investigation by the Colonel), which was subsequently turned into an all-out conflict (via Plaintiff's judicial filings), should now end on the same question: a question that set the stage for what as to come; a question that changed their professional relationship forever; a question that thrust their relationship out of the cooperative stage into a competitive stage where opposing goals collided;[60] a question that led to conflict or war. The words "die on this hill" provided the warning order that the Colonel was poised for a possible attack; small competitive actions and an assault followed.

35. The Plaintiff understood the Army Regulatory environment well enough to know that he could not hope to win direct tactical engagements with a superior officer (one rank away from the star of a General), but also knew that his impromptu decision not to physically fight back, when assaulted by the Battalion CSM, was the correct one. After that incident, the Colonel exacted the overt kinetic salvo for the Plaintiff to see, he reassigned the Plaintiff back under a biased authority so he could then be ordered to an eCDBHE; it was at that moment the Plaintiff realized he was under full attack! While waiting to be seen in the hospital and via surrogate, the Plaintiff promptly scheduled a reprisal intake meeting at USASOC IG for the next day.

36. Then, the small tactical battles (entrapments) continued, and after each one, the Plaintiff consistently and promptly informed USASOC IG. After all, he knew that the only way to get this situation to deescalate was to get the Colonel and his staff to vacate their aggressive 'hunt'[61] in support of the weak investigation. This also failed. The competitive struggle was slowly transformed by IG's inaction; the competitive disagreement began teetering on crisis[62] a crisis of the Plaintiff's separation; a Defendant action that would send this preventable situation into

an all-out conflict.[63] After all, once the Plaintiff was notified that his unblemished career was identified by the QMP process, the preventable became inevitable, because "[e]ven reading those sentences and that criterion, one should be able to see and understand how and why [the Plaintiff] would not have thought in a million years that this was at all applicable to him and his accomplishments[;]"[64] Hence, March 27, 2024 marked the first[65] of two *pro se* lawsuits.

37. Even though every battle was preventable, the Colonel and the GCMCA never waivered in their intent to win. Why would they? They had the perfect weapon. They had the QMP Board (the 'king's court,' his 'baby').With its lack of transparency, and its restriction of any documentable counter attacks, it is the perfect venue to solve its problem by forcing a separation of the Plaintiff. Is this merely conjecture? No. The 2022 GAL (ref'd in para. 10) proves it is not.

PLAINTIFF STRATEGY: OPERATION LEGAL HAMMER

38. As stated and upon the Plaintiff's determination that the Inspector General was powerless or unwilling to assist him, the Plaintiff realized a war was afoot and filed suit. The war of attrition had begun, but it was a war, nonetheless. This war was not with the threat of life and limb, but with different, real, tangible and material consequences for many; and it was executed with very different approaches on opposing sides. While the Colonel relied on short-term tactical (direct offensive) operations of an investigation and its associated entrapments attempts, the Plaintiff answered with 'bigger picture,' operational (procedural and statutory), or strategic (constitutional) arguments. These are found in the Plaintiff's rebuttals, command notifications, open door requests, and oversight remediation complaints, as well as lawsuit filings; he even contributed to a new policy that addressed the causal violations.

39. In other words, the Plaintiff strategy is civil, non-violent and professional, because his goal is, to eventually dutifully fulfill his contract and retire. Yet, he refused to 'die on any hill,' especially one of the Colonel's or the General's arbitrary and capricious making, let alone, one

of an unconstitutional origin; because after all, the Plaintiff swore to defend the Constitution against all enemies both foreign and domestic. The Colonel's strategy to win was rooted in unchecked overreach and an unconstitutional QMP process, conversely the Plaintiff's opposition was founded on statutes and the 5th Amendment.

40. The Constitutional underpinnings of this case created a zero-sum-game, a 'battle of wits' in this "factual dispute" (*Loudermill*, at 544). In other words, it has the markings of ground-breaking influence. Certainly, the Plaintiff's career should not be made to 'die on any hill' because he identified these underpinnings. Instead, it should be the unconstitutionally contrived and used programs that caused, or directly affected, his separation; SDI, HPW and QMP should suffer ostracization, destruction or rehabilitation, not the Plaintiff.

43. This should be done for the betterment of the Army and to help restore the 'backbone'[66] of the Army for all Senior NCOs to come. No Senior NCO should be treated like this:

> *the significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood. .... While a fired worker may find employment elsewhere, doing so will take some time and is likely to be burdened by the questionable circumstances under which he left his previous job. ....* ***A governmental employer also has an interest in keeping citizens usefully employed rather than taking the possibly erroneous and counterproductive step of forcing its employees onto the welfare rolls***. (*Loudermill,* 543-544)

And the MSPB (Merit Systems Protections Board) chimes in as well:

> *There are good reasons why public employers must ensure that actions are taken to advance the efficiency of the service and* ***not for improper motives****. These requirements mean that* ***certain procedural rules must be followed****. But, in the words of Supreme Court Justice ...,* ***'[i]t is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law.'***[67]

THE NEXUS

41. The Defendant's (leader's) conduct, character, and/or motives created the nexus[68] between the unlawful order and the Plaintiff's 60-second request for the missing required statutory informed

consent information; the alleged disrespect is the nexus that permeates the entire separation. These facts are undeniable. The Defendant's conduct was not exemplary as it separated the Plaintiff using biased *ex parte*[69] investigations (dumping myriad allegations on him with a GOMOR / making him 'subject' in his MWPA complaint), using *ex parte*[70] influence in a GOMOR filing determination,[71] and failing to convene an earned ASB under Secretarial Plenary Authority. Instead, it used a repugnantly established QMP Board that denies the right to a defense and Constitutional due process.

WHO ADJUDICATES A "REPUGNANT" REGULATIONS ANYWAY?

42. As previously discussed, if Congressional laws or the Presidential orders can't diminish the Bill of Rights, where does one get the constitutionality of an alleged repugnant regulation adjudicated? It has been stated that the judiciary has the jurisdiction to adjudicate them:

> *An act of congress* ***repugnant*** *to the constitution cannot become a law" and it is "****emphatically the province and duty" of the judiciary to interpret laws and the Constitution.*** *As a result, any decisions by the Supreme Court involving constitutional interpretations – including decisions regarding public employment –* ***are binding on Congress and the President****.* (emphasis added)[72]

The Plaintiff relies on the Court to adjudicate the QMP regulation under Army Secretarial Plenary Authority in relation to the weight of our Constitution and its Bill of Rights.

43. The Army's 'dirty little secret' aka. a 'king's court,' (the QMP Board)[73] was interpreted from a vague law[74] and is now argued and challenged. ASBs[75] still exist, are apropos, and are constitutionally sound, which renders a QMP Board arbitrary, capricious, contrary to the Constitution, and moot. The appropriate question for the Court would be, 'whether the U.S. Army erred in its interpretation of 10 U.S.C. § 1169 when it established an unconstitutional structure and procedure of AR 635-200, Ch. 16-11, on June 6, 2005[76], which has been used to

administer separations.' If so, the QMP should be erased under APA judicial review;[77,78,79] it should be sent back to the 'good-idea-fairy'[80] graveyard from whence it was 'born.'

44. Then, further legal action,[81] as experienced in *Manker, et. al., v. Del Toro*, Case No. 3:18-CV-372 (CSH) (D. Conn.),[82] should be considered to ascertain if the ABCMR must "automatically reconsider its decisions"[83] of applicable cases, allow for "notice of reapplication rights for [identified affected] applicants"[84] and/or allow for a public notice period to permit Soldiers' application whom intimated a defense in QMP, but were dissuaded from ABCMR application due to QMP denial. Tenured Army Senior NCOs are NOT at-will employees.

45. There should be 'no kings' in our military. It is for the reasons contained in this case that "[the Plaintiff has] … demonstrate[d] from the administrative [and/or the supplemented] record that the Army violated these authorities while reaching the decisions to reprimand, [relieve,] and separate him" (ECF 32 at 13). Specifically, QMP, which is an abomination 'born' of the Army's (the 'king's') making, has farther reaching affects. Now, as this Appendix K case nears a decision point, the 'king' and the 'king's subject' have both ran to 'take the hill.' This Court should permit the Plaintiff to plant our Flag 'on the hill' in defense of not only his career, but also, on behalf of all Soldiers oppressed by the unconstitutional QMP Board (as structured) due to the concurrent *Loudermill* opinion of Justice Brennan:

> *As the Court convincingly demonstrates, the employee's right to fair notice and an opportunity to "present his side of the story" before discharge* ***is not a matter of legislative grace, but of "constitutional guarantee."*** (*Loudermill*, 541, 546)

"To prevent irreparable injury,"[85] please GRANT relief as soon as it is reasonable / prudent.

De oppresso liber!

July 7, 2025
Date

Signature of Plaintiff

614 Northampton Road
Fayetteville, NC 28303

Cell: (910) 336-5966
Email: forbes2024cfc@yahoo.com

[1] Army Regulation 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 2, June 28, 2021.

[2] AR 635-200, *Active Duty Enlisted Administrative Separations,* second to last bullet under *SUMMARY OF CHANGES* (this document could be found online by the Plaintiff in this original form; modified versions entitled Rapid Action Review are found with this section modified), June 6, 2005

[3] Ibid.

[4] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 1-20, a., June 28, 2021.

[5] "The term arbitrary describes a course of action or a decision that is not based on reason or judgment but on personal will or discretion without regard to rules or standards," arbitrary. (n.d.). In *TheFreeDictionary.com*. https://legal-dictionary.thefreedictionary.com/arbitrary.

[6] "unpredictable and subject to whim, often used to refer to judges and judicial decisions which do not follow the law, logic or proper trial procedure. A semi-polite way of saying a judge is inconsistent or erratic." capricious. (n.d.). In *TheFreeDictionary.com*. https://legal-dictionary.thefreedictionary.com/capricious

[7] "The QMP process stems from a presumption of administrative finality in that adverse documents (unfavorable information) filed within a Soldier's Army Military Human Resource Record (AMHRR) are properly filed, administratively correct, and filed pursuant to an objective decision by competent authorit.," QMP FAQ, https://home.army.mil/buchanan/6615/3805/7291/ILO_Separation_under_the_Qualitative_Management_Program_QMP.pdf.

[8] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 16-11, g., (2), June 28, 2021.

[9] UCMJ Article 89, also known as 10 USC 889.

[10] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 16-11, g., (2), June 28, 2021.

[11] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 2, generally, June 28, 2021.

[12] ABCMR Board Proceedings, ICO: AR20230000434 (redacted), para. 3., b., August 18, 2023, https://boards.law.af.mil/ARMY/BCMR/CY2023/AR20230000434_Redacted.pdf.

[13] *Ibid*, para. 3., n.

[14] *Harkins et al. v. USA,* (Fed. Cl. 2025) Case No. 1:2023cv01238 , Document 36, pg. 2.

[15] *Ibid*.

[16] A 15-6 Investigation refers to an investigation conducted IAW Army Regulation 15-6.

[17] *Commonly known as the Stone/Ward factors, see both, Ward v. United States Postal Serv.*, 634 F.3d 1274, generally (Fed. Cir. 2011), *and Stone v. FDIC* (Fed. Cir. 1999), 179 F3d 1368, 1372-73, generally.

[18] "The terror of the gulags: Stalin's iron-fisted control over Soviet society"*, History Skills*, downloaded July 6, 2025, *online at:* https://www.historyskills.com/classroom/modern-history/gulags/#:~:text=Show%20trials%2C%20a%20characteristic%20feature%20of%20the%20Great,were%20sentenced%20to%20long%20terms%20in%20the%20gulags.

[19] *General Administrative Law (GAL) Deskbook*, (Administrative and Civil Law Department, The Judge Advocate General School, United States Army), pg. B-22, Sep., 2022

[20] *Ibid*., pg., B-22 & B-68, etc.

[21] *Ibid*., pg., F-4

[22] *See Army Board for Correction of Military Records (BCMR)*, Page last updated: Tue 17 Jun 2025, https://boards.law.af.mil/ARMY_BCMR.htm.

[23] *See* ECF 33, Exhibit S01, AR 635-200, *Active Duty Enlisted Administrative Separations,* Ch. 19-12, b., June 6, 2005.

[24] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 16-11, b. (10), June 28, 2021.

[25] *See* "What is Due Process in Federal Civil Service Employment?" *U.S. Merit System Protection Board*,Chapter 2, generally, May 2015, https://www.mspb.gov/studies/studies/What_is_Due_Process_in_Federal_Civil_Service_Employment_1166935.pdf

[26] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 16-11, b., (10), June 28, 2021.

[27] "What is Due Process in Federal Civil Service Employment?",*U.S. Merit System Protection Board*, Chapter 1, pg. 3, May 2015.

[28] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch.2, vs. Ch. 16-11, June 28, 2021.

[29] "The terror of the gulags: Stalin's iron-fisted control over Soviet society"*, History Skills*, downloaded July 6, 2025, *online at:* https://www.historyskills.com/classroom/modern-history/gulags/#:~:text=Show%20trials%2C%20a%20characteristic%20feature%20of%20the%20Great,were%20sentenced%20to%20long%20terms%20in%20the%20gulags.

[30] "By…statute (10 USC §1169 for RA Soldiers…) and policy (AR 635-200, chapter 19 as superseded by Army Directive 2014-06), the Secretary of the Army (or his/her designee) may authorize involuntary separation.," from *QMP FAQ*, https://home.army.mil/buchanan/6615/3805/7291/ILO_Separation_under_the_Qualitative_Management_Program_QMP.pdf.

[31] "By…statute (10 USC §1169 for RA Soldiers…) and policy (AR 635-200, chapter 19 as superseded by Army Directive 2014-06), the Secretary of the Army (or his/her designee) may authorize involuntary separation.," from *QMP FAQ,* https://home.army.mil/buchanan/6615/3805/7291/ILO_Separation_under_the_Qualitative_Management_Program_QMP.pdf.

[32] *See*, 10 U.S.C. § 1169.

[33] *Cleveland Board of Education v. Loudermill Parma,* 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)

[34] *See* ECF 33, Exhibit S01, AR 635-200, *Active Duty Enlisted Administrative Separations,* Ch. 19-4, 19-6 & 19-7, June 6, 2005.

[35] Army Directive 2014-06, Qualitative Management Program, April 10, 2014, which cannot be located online at https://armypubs.army.mil, the Library of Congress, the West Point Library or any of the universities or museums that the Plaintiff sought to get it for this Court.

[36] "The Army also told [the reporter] 2015 was the first time staff sergeants were targeted for QMP removal. Almost 4,000 staff sergeants have been selected for QMP so far, with more than 1,500 being removed. Branch said he never worried about QMP before, because staff sergeants had never been targeted."

[37] Genevieve Curtis, "KFOX14 Investigates: Spike in Army firing soldiers, using controversial methods" *KFOX14,* Sep. 29, 2016*,* https://kfoxtv.com/news/local/kfox14-investigates-spike-in-army-firing-soldiers-using-controversial-methods.

[38] Ibid. "A Fort Knox spokesperson said the Army does not keep track of the QMP numbers by installation so there is no way to know how many soldiers at Fort Bliss are being removed through this process."

[39] AR 635-200, *Active Duty Enlisted Administrative Separations,* Ch. 16-11, g. (2), June 28, 2021.

[40] AR 635-200, Active Duty Enlisted Administrative Separations, Ch. 16-11, b. (10), June 28, 2021.

[41] *See* Joint *Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 179 (1951) (Douglas, J., concurring).

[42] *Ibid*., at Footnote 147.

[43] "List of landmark court decisions in the United States" *Wikipedia*, *online at:* https://en.wikipedia.org/wiki/List_of_landmark_court_decisions_in_the_United_States.

[44] *See*, "What is Due Process in Federal Civil Service Employment?" *U.S. Merit systems Protection Board,*Chapter 1, pg. 3-5, May 2015 https://www.mspb.gov/studies/studies/What_is_Due_Process_in_Federal_Civil_Service_Employment_1166935.pdf

[45] ABCMR Board Proceedings, ICO: AR20230000434 (redacted), para. 3., f., August 18, 2023, https://boards.law.af.mil/ARMY/BCMR/CY2023/AR20230000434_Redacted.pdf.

[46] "What is Due Process in Federal Civil Service Employment?" *U.S. Merit systems Protection Board*Chapter 1, pg. 3, May 2015 https://www.mspb.gov/studies/studies/What_is_Due_Process_in_Federal_Civil_Service_Employment_1166935.pdf

[47] Ibid. *at* footnote 28, *citing* the Senate Committee on Post Office and Civil Service, *Appeals and grievance procedures in the Federal Government*, 83 S. Doc. 33 (Mar. 20, 1953, at 7-8), May 2015, *online at:* https://www.mspb.gov/studies/studies/What_is_Due_Process_in_Federal_Civil_Service_Employment_1166935.pdf

[48] *"*Army Review Boards and military personnel law practice and procedure," *The Free Library* September 1, 2010, https://www.thefreelibrary.com/Army+Review+Boards+and+military+personnel+law+practice+and+procedure.-a0249606928

[49] *See Army Board for Correction of Military Records (BCMR),* Page last updated: Tue 17 Jun 2025, https://boards.law.af.mil/ARMY_BCMR.htm.

[50] *See* ABCMR Board Proceedings, ICO: AR20230000434 (redacted), 3. d. & 3. q., August 18, 2023, https://boards.law.af.mil/ARMY/BCMR/CY2023/AR20230000434_Redacted.pdf

[51] *referenced seven times in* ECF 32

[52] *See* "What is Due Process in Federal Civil Service Employment?" *U.S. Merit systems Protection Board,* Chapter 2, pg. 18, and footnote 65, May 2015 https://www.mspb.gov/studies/studies/What_is_Due_Process_in_Federal_Civil_Service_Employment_1166935.pdf

[53] Ibid, *at* 18, & footnote 66.

[54] Ibid, at 18, & footnote 67.

[55] In fact, when the Plaintiff queried a small group of 20+ year retired colleagues if they had ever heard about their "Loudermill rights," only one stated, "I heard of it somewhere years ago."

[56] Identical content found in AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 19-12, b., June 6, 2005.

[57] Friendly, Henry J. "Some Kind of Hearing" *U. Pa. L. Rev.*. 123 U. Pa. L. Rev. 1267 (1975), *available at:* https://scholarship.law.upenn.edu/penn_law_review/vol123/iss6/2.

[58] *Perry v. Sindermann*, 408 U.S. 593 (1972).

[59] 10 USC § 7233.

[60] *"Doctrine for the Armed Forces of the United States," Joint Doctrine Planning Conference, Joint Publication,* slides 13 & 14, May 23, 2018, *online at:* https://slideplayer.com/slide/14372383/.

[61] *See* letter from Plaintiff's wife to the Secretary of the Army in the AR, which was placed in the Plaintiff's AMHRR, ECF 19-2 at 001146.

[62] *Ibid*.

[63] *Ibid*.

[64] The Plaintiff's notification was extremely similar (ECF 19-2 at001057) to ABCMR Board Proceedings, ICO: AR20230000434 (redacted), para. 3., r., August 18, 2023, https://boards.law.af.mil/ARMY/BCMR/CY2023/AR20230000434_Redacted.pdf.

[65] This is the second lawsuit and in the proper venue. The first failed do to the Plaintiff's limited knowledge of the Court system, improper filings and a questionable venue for a separation decision of this magnitude. His knowledge base has experienced a continuous growth trajectory since then.

[66] The NCO corps in commonly referred to as "the Backbone of the Army."

[67] *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 179 (1951) (Douglas, J., concurring). In that same decision, Justice Felix Frankfurter wrote: "Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of Rights. That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness." Id. at 171 (Frankfurter, J., concurring).

[68] ABCMR used the *Kurta* memo to adjudicate a 'nexus' that was not established (in that case), "Yet, there is no nexus between the applicant's PTSD and the applicant's misconduct," which indicates the determination decision of a nexus is relevant to board outcomes.

[69] *Commonly known as the Stone/Ward factors, see both,* Ward v. United States Postal Serv., 634 F.3d 1274, generally (Fed. Cir. 2011), *and Stone*, 179 F.3d at 1372-73. (An ex parte communication is a communication between one party and the decision-maker where the other party is not present and not given the opportunity to present his or her side of the argument.)

[70] *Ibid*.

[71] ECF 19-2 at 001514-001515

[72] *See* "What is Due Process in Federal Civil Service Employment?" *U.S. Merit System Protection Board* Chapter 2, pg. 18-19, May 2015, https://www.mspb.gov/studies/studies/What_is_Due_Process_in_Federal_Civil_Service_Employment_1166935.pdf

[73] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 16-11, June 28, 2021.

[74] 10 U.S.C. § 1169.

[75] AR 635-200, *Active Duty Enlisted Administrative Separations*, Ch. 2, June 28, 2021.

[76] In 2005, it was Chapter 19.

[77] 5 U.S.C. §§§§ 702, 703, 704, 706.

[78] *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

[79] The affirmative defense added in 2017 (ECF 5) to 10 U.S.C. § 1034 likely needs judicial review as well.

[80] A commonly used euphemism used in the Army to refer to myriad ridiculous, unsubstantiated or impractical ideas that occur during brain-storming sessions or planning meetings, etc.

[81] The *Manker* case provides the necessary 'terrain map' for initiated mission planning for a strategic multi branch campaign of a *pro se* (or represented) case brought on behalf of all historically affected Soldiers.

[82] For more information on the settlement that resulted from the *Manker* case, *see* https://www.secnav.navy.mil/mra/CORB/Pages/NDRB/Class-Settlement-Information.aspx

[83] *Manker, et. al., v. Del Toro*, Case No. 3:18-CV-372 (CSH) (D. Conn.).

[84] *Ibid*.

[85] 5 U.S.C. § 705.

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