



rape in the military (collectively, “military sexual trauma” or “MST”), as well as MST’s consequences for veterans after their service is completed.

5. Experiencing military sexual trauma can wreak havoc on a service member’s ability to pursue a meaningful career in the armed forces.

6. Individuals within the chain of command frequently retaliate against the minority of survivors who report an offense. Survivors are at increased risk of post-traumatic stress and substance abuse disorders, which can impair their ability to fulfill assigned duties. Survivors who are discharged from the military with a less-than-honorable discharge status due to retaliation or MST-associated misconduct become ineligible for medical care and other critical federal and state benefits that their service merits, and face a lifetime of shame and discrimination by private employers.

7. To redress these injustices, Plaintiffs have sought a wide range of reforms to the military justice, personnel, and discharge review systems. Nonetheless, Defendants have not taken the steps necessary to end sexual harassment, assault, and rape in the military. Service members are not sufficiently protected from MST while they serve, and survivors are not adequately cared for after they leave.

8. Plaintiffs filed FOIA requests seeking information about the military’s treatment of survivors of sexual harassment, assault, and rape. The government has responded with denials and delay, refusing to disclose records relating to gender disparities within the military justice system or the military record correction boards’ handling of sexual assault and harassment cases.

9. The military’s treatment of survivors of MST cannot be a black box. Defendants’ prompt, complete response to the FOIA requests is necessary to bring this important information to light.

**JURISDICTION AND VENUE**

10. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331 and 1361.

11. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)(c) as Plaintiff Connecticut Veterans Legal Center resides and has its primary place of business in the District of Connecticut, and no real property is involved in this action.

**PARTIES**

12. Plaintiff POD is the only national nonprofit organization solely dedicated to ending the epidemic of sexual harassment, assault, and rape in the military and to combating a culture of pervasive misogyny and retribution against victims. POD honors, supports, and gives voice to survivors of military sexual assault and sexual harassment, and seeks reforms to ensure that all survivors and service members are provided a safe, respectful work environment and have access to a fair, impartially administered system of justice.

13. POD also analyzes sexual assault and harassment data, publicizes its research, presses for collection and disclosure of military data on demographics of and disparities affecting both the victim and the accused, educates the public and press on key findings, and collaborates on major research projects. Because members of Congress, stakeholders, survivors, advocates, and the press rely on it for fact-based analysis, it is crucial that POD receive the requested information promptly, as required by statute.

14. Plaintiff CVLC is a nonprofit organization whose mission is to help veterans who have experienced homelessness and mental illness to overcome legal barriers to housing, healthcare, and income. CVLC is the first VA medical-legal partnership in the country, co-locating with VA medical centers in the state to provide legal services to marginalized clients,

many of whom are homeless or have serious mental disabilities. In addition, CVLC spearheads advocacy and education efforts on behalf of veterans within the state and nationally and produces manuals for veterans' legal services nationwide.

15. Defendant Department of Defense ("DoD") is the federal agency responsible for coordinating and supervising government activity related to national security and the United States Armed Forces. The Departments of the Army, Air Force, and Navy are within DoD. The Marine Corps is a component of the Department of the Navy. DoD is an agency within the meaning of 5 U.S.C. § 552(f).

16. Defendant Department of Homeland Security ("DHS") is the federal agency tasked with preserving the security of the United States within its borders. The Coast Guard is in service of DHS, except when operating in the service of the Navy. DHS is an agency within the meaning of 5 U.S.C. § 552(f).

### **STATEMENT OF FACTS**

#### **The United States Armed Forces Has Failed to Integrate Women into Its Ranks**

17. The modern history of women in the U.S. military began during World War II. More than 350,000 women volunteered for military service. Seven million women accepted jobs in wartime manufacturing, many of which had been previously closed to them.

18. In 1942, President Roosevelt signed legislation creating an all-volunteer Women's Army Auxiliary Corps.

19. DoD founded the women's naval organization, Women Accepted for Volunteer Emergency Service, in July 1942; the women's coast guard, Semper Paratus Always Ready, in November; and the U.S. Marine Corps Women's Reserve in February 1943.

20. Despite the opportunities that participation in these organizations afforded,

military leadership often treated the women who enlisted in them like second-class service members. The military excluded these women from combat duty, barred them from commanding male service members, and paid them less than their male counterparts.

21. Civilian women also supported the war effort as artillery inspectors, aircraft welders, sheet metal assemblers, gear cutters, lathe operators, chemical analysts, and mechanics. Millions of civilian women raised crops for the Women's Land Army, a federal agriculture program.

22. In 1948 – at a time when the rate of women's military service was growing rapidly – President Harry Truman signed Executive Order 9981, which called for the desegregation of the Armed Forces by providing “equality of treatment and opportunity for all persons in the armed services.” Exec. Order No. 9,981, 13 Fed. Reg. 4313 (July 28, 1948).

23. That same year, President Truman sanctioned discriminatory treatment against female service members when he signed the Women's Armed Service Integration Act of 1948. The legislation enabled women to serve as permanent, regular members of the armed forces and entitled them to veterans' benefits, but it barred women from participation in combat roles.

24. Despite these limitations, and following the establishment of an all-volunteer force in 1973, the number of women serving in active duty roles has risen dramatically. The share of female enlisted service members has increased from 2% to 14%, and the share among commissioned officers has increased from 4% to 16%.

25. In 1976, Congress required the military to admit female students to the military service academies. Senior leadership at West Point resisted their inclusion and issued a public statement that the presence of female students had been “disruptive” and served to “alienate the men.” Kelly Schloesser, *The First Women of West Point* (Oct. 27, 2010), available at

[http://www.army.mil/article/47238/the\\_first\\_women\\_of\\_west\\_point](http://www.army.mil/article/47238/the_first_women_of_west_point).

26. In 1996, Virginia Military Institute and the Citadel became the last state-funded schools to admit female students after the Supreme Court held that their male-only admissions policies violated the United States Constitution's equal protection guarantee.

27. The military has lifted other restrictions on women's service over the past two decades. In 2013, citing the changes in women's combat service, the Secretary of Defense rescinded his only remaining policy limiting women's service in the military – the direct ground combat exclusion policy – and ordered the service branches to integrate women fully into all facets of military service by January 1, 2016.

28. Notwithstanding this incremental progress, the military's efforts to integrate women have long lagged behind the civilian sector. Today, women make up 47% of the civilian workforce but account for little over 15% of the Department of Defense's active duty force.

**MST and Retaliation Threaten Gender Equality in Military and Civilian Life**

29. Even as the military lifts *de jure* restrictions on women's equal participation in its ranks, many *de facto* barriers to women's advancement endure.

30. Most important is the persistent and pervasive culture of harassment and discrimination. High rates of rape, sexual assault, and harassment constitute a major obstacle to women's advancement within the armed forces and civilian life.

31. In fiscal year 2016 alone, almost 15,000 service members experienced sexual assault. Female service members reported sexual assault at a rate two and a half times greater than male service members. U.S. Dep't. of Defense, *Annual Report on Sexual Assault in the Military FY2016* 13 (2016).

32. Fifty-five percent of female service members report experiencing sexual

harassment. 2 Nat'l Def. Research Inst., *Sexual Assault and Sexual Harassment in the U.S. Military: Estimates for Department of Defense Service Members from the 2014 RAND Military Workplace Study* 9 (Andrew R. Morral et al. eds., 2014).

33. Lesbian, gay, bisexual, and transgender (“LGBT”) service members also experience elevated rates of sexual assault and harassment.

34. Women who identify as LGBT are almost two times more likely than straight and cisgender women to experience sexual assault. The disparities are even higher for LGBT men, who are *over ten times* more likely than straight and cisgender men to be sexually assaulted. U.S. Dep’t. of Defense, *Annual Report on Sexual Assault in the Military FY2016*, at 15 (2016).

35. The consequences of MST are disproportionately borne by female service members of color, as the active-duty female force is more racially diverse than the male force.

36. According to the Pew Research Center, “nearly one-third (31%) of active-duty women are black compared with only 16% of men, and a smaller share of active-duty women than men are white (53% vs. 71%).” Eileen Patten & Kim Parker, Pew Social Trends, *Women in the U.S. Military: Growing Share, Distinctive Profile* (2011).

37. The effects of MST are wide ranging. Victims are four times more likely to suffer from PTSD compared with veterans with no sexual-assault histories. Shira Maguen, et al., *Gender Differences in Military Sexual Trauma and Mental Health Diagnoses Among Iraq And Afghanistan Veterans With Posttraumatic Stress Disorder*, 22 *Women’s Health Issues* e61, e65 (2012). Victims also experience higher rates of chronic pain, pelvic pain, and chronic fatigue as well as eating disorders, depression, dissociative disorder, and substance abuse.

38. Homelessness among female veterans is particularly acute. Female veterans are two to four times more likely than civilian women to experience homelessness. Gail Gamache, et

al., *Overrepresentation of Women Veterans Among Homeless Women*, 93 Am. J. Public Health 1132, 1134 (2003). One study showed that over half of all homeless female veterans have experienced rape, sexual assault, or harassment. See Donna L. Washington et al., *Risk Factors for Homelessness Among Women Veterans*, 21 J. Health Care for The Poor and Underserved 82, 87 (2010).

**Victims of Military Sexual Trauma Are at Increased Risk of Discharge from the Military**

39. Service members who have experienced MST are also at increased risk of involvement with the military justice system, as the effects of sexual trauma can manifest in misconduct and subsequent discharge from the armed forces.

40. Service members who report MST experience high rates of retaliation that can end their careers.

41. In FY 2016, 40% percent of active duty service members stated they experienced professional reprisal after they reported sexual assault. U.S. Dep't. of Defense, *Annual Report on Sexual Assault in the Military FY2016*, at 32 (2016).

42. In a majority of cases, the retaliator is within the service member's chain of command.

43. There is significant documentation showing commanders punishing service members who report MST. Reporters are frequently given negative comments in performance evaluations; denied opportunities for training and deployment; and passed over for promotion. Others have been targeted for disciplinary action and separated from the armed forces with a less-than-honorable discharge. See Sara Darehshori, Human Rights Watch, *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors* (2016).



44. Commanders retain broad discretion over the process of administrative separations as well, and have been found to exercise this discretion in retaliation.

**The Consequences of a Less-than-Honorable Discharge Are Lifelong**

45. Whether due to misconduct associated with MST or retaliation, there are lifetime consequences of receiving a less-than-honorable discharge; the effects persist, in part, because there are few avenues for service members to correct their records.

46. Service members may seek correction of their discharge status by submitting an application to the Board for Correction of Military/Naval Records (BCMR) or the Discharge Review Board (DRB) for each service branch.

47. These bodies have broad statutory authority to grant discharge upgrades but rarely grant requests. Sundiata Sidibe & Francisco Unger, *Unfinished Business: Correcting Bad Paper for Veterans with PTSD* 3 (VVA & NVCLR: 2015).

48. Even though the Boards have been explicitly ordered to grant “liberal consideration” to the claims of veterans with PTSD and MST, only about half of those veterans have received upgrades. *Id.* at 6.

49. In cases where an individual was retaliated against after they reported MST, the Boards must apply the Military Whistleblower Protection Act (MWPA). Few veterans receive relief under the statute, in part due to inadequate efforts by the Boards to implement its requirements.

50. Like other veterans, MST survivors seek disability compensation from the VA, most commonly for PTSD, in order to support themselves and their families while making up for earnings lost as a result of their injuries. To receive benefits, a veteran must prove that a current disability is related to military service.

51. Although the VA has reduced the disparities in grant rates between claims involving PTSD and MST, veterans who experience in-service sexual trauma continue to face discrimination in seeking disability compensation. *See American Civil Liberties Union & Service Women's Action Network, Battle for Benefits: VA Discrimination Against Survivors of Military Sexual Trauma 1* (2013).

52. Individuals who are discharged with a less-than-honorable discharge forfeit a range of benefits from the VA, which include assistance with education and training, health care coverage, disability compensation, and burial benefits.

53. Employers in the private sector often discriminate against veterans with “bad paper.” Some private employers refuse to consider applications from veterans with less-than-honorable discharges.

**The Military Has Refused to Release Information  
About the Effectiveness of Its Response to Gender Discrimination**

54. The public has a strong interest in information that reveals the effectiveness of efforts to address gender disparities in the military. This information includes records regarding gender disparities in the DoD's military justice system and handling of MST claims by the BCMRs and DRBs.

55. Much of the information about the extent and cost of gender discrimination in the military, particularly with respect to MST, is not in the public sphere.

56. The public has a compelling interest in this information, given the potential enormity of the problem, the emotional and financial cost that it imposes on military service members, and the increasing number of women serving in the armed forces.

57. Just as the Defense Department has been slow to respond to the advocacy groups and politicians who have attempted to shed light on the MST crisis, it has refused to comply with its statutory obligation to produce documents under FOIA.

58. For example, in July 2013, at the height of a contentious Senate debate over legislation to create an impartial military justice system, the Pentagon provided misleading and unsupported claims to Congress to block reform.

59. In that case, through a FOIA request, POD was able to demonstrate that the Pentagon exaggerated and distorted the facts in order to undermine fundamental reform of the military justice system. *See* Protect our Defenders, *Debunked: Fact-Checking the Pentagon's Claims Regarding Military Justice* (2016).

60. Plaintiffs must have access to the records they have requested to do the same for survivors of MST.

### **The Plaintiffs' FOIA Requests**

61. To redress the military's gender disparities, Plaintiffs filed FOIA requests seeking information about the military's treatment of survivors of sexual harassment, assault, and rape.

### ***July 6 FOIA Requests – MWPA***

62. On July 6, 2017, Plaintiffs POD and CVLC submitted FOIA requests ("July 6 Requests") to the Army, Air Force, Navy, and Coast Guard via overnight mail and email.

63. The July 6 Requests seek records related to the prosecution of claims under the MWPA by the BCMRs. The July 6 requests to each of the branches are substantively identical. The letter to the Army is attached as Exhibit A.

64. To date, the Army has not acknowledged the July 6 request in any way nor disclosed any responsive records.

65. The Air Force provided its final disposition to Plaintiffs' July 6 Requests on August 22, thirteen days after the statutory deadline for response.

66. On October 4, 2017, Plaintiffs timely appealed, because the Air Force did not conduct an adequate search for records. Plaintiffs also appealed the Air Force's decision to withhold the names and votes of the BCMR members under 5 U.S.C. § 552(b)(6) ("Exemption 6"). The appeal is attached as Exhibit B. The statutory deadline for response expired on November 2, but the Air Force has failed to respond to Plaintiffs' appeal.

67. The Navy, whose BCNR adjudicates claims brought by Marines as well as sailors, provided its final disposition to Plaintiffs' July 6 request on September 26, 2017.

68. Plaintiffs timely appealed on November 8 (copy attached as Exhibit C). The Navy failed to answer Plaintiffs' appeal within the time allowed by statute, which expired on December 8. Plaintiffs' unanswered appeal challenges the adequacy of the Navy's search, and the Navy's failure to specify its search methods – which has resulted in Plaintiffs' inability to determine whether the Navy relied upon the legal definition of a protected communication.

69. The Coast Guard acknowledged the July 6 request via email on August 3, but has provided no substantive response to date.

#### ***July 14 FOIA Requests - Military Justice System***

70. On July 14, 2017, Plaintiffs submitted FOIA requests ("July 14 Requests") to the Army, Air Force, Marine Corps, and Coast Guard via overnight mail and email.

71. The July 14 Requests seek records related to the prosecution of sexual assault offenses under Uniform Code of Military Justice Articles 120 and 125 in military courts-martial and in civilian courts. The July 14 Requests to the Army, Marine Corps, and Coast Guard are substantively identical, as are the first six requests to the Air Force. The letter to the Air Force

also includes an additional seventh request, on the creation and performance of the Air Force's "diversity team" (Exhibit D).

72. After sending an acknowledgement letter on August 10 stating only that Plaintiffs' July 14 Request was in a "complex queue," the Army provided its final disposition of records on October 20, forty-eight days after the statutory deadline.

73. Plaintiffs timely appealed on November 2. The appeal is attached as Exhibit E.

74. In its response, the Army did not sufficiently respond to Plaintiffs' requests in multiple paragraphs, instead claiming that such records are not maintained. The Army provided no information about its search methods that would allow Plaintiffs to determine whether its search was adequate and improperly withheld information under Exemption 6.

75. After months of silence, and only after Plaintiffs' counsel inquired, the Air Force confirmed on October 2 that it has received and is processing the July 14 Request. The Air Force has provided no additional response to date.

76. In response to the July 14 Requests, the Navy provided its final disposition of records on August 30.

77. On October 2, 2017, Plaintiffs timely appealed, challenging the adequacy of the Navy's search. The appeal letter is attached as Exhibit F. The Navy responded to Plaintiffs' appeal in part on November 30, twenty working days after the twenty provided by statute had expired. The Navy admits that it does not maintain any records responsive to Paragraph 5 of Plaintiffs' July 14 request. Plaintiffs do not challenge the Navy's response in this Complaint with regard to Paragraph 5. Plaintiffs do, however, challenge the Navy's failure to respond in a timely matter to the remainder of the issues that Plaintiffs appealed on October 2.

78. The Marine Corps partially granted and partially denied the July 14 Requests on

August 24.

79. Plaintiffs timely appealed on October 2, because the Marine Corps did not provide responsive records for multiple paragraphs, and gave no explanation for this omission. A copy of the appeal is attached as Exhibit G. In response to several items of the July 14 Requests, the Marine Corps did not specify the search methods that led it to conclude that it does not maintain responsive records. The statutory deadline for response expired on October 31.

80. On November 3, the Marine Corps decided Plaintiffs' appeal, attached as Exhibit H. Plaintiffs' appeal of Questions 3, 4, 5, and 6 was granted. The Marine Corps agreed to conduct a more thorough search of its database for the requested information, but it has yet to provide a timeline for response.

81. The Marine Corps continues to refuse to provide staff judge advocate (SJA) biographies in response to Question 1, claiming that these fall under Exemption 6 and that releasing these biographies could subject SJAs to "terrorist threats." Plaintiffs challenge the Marine Corps' denial of their appeal with respect to these questions.

82. At the Coast Guard's request, Plaintiffs agreed to modify several parts of their requests and withdraw Question 6 on August 8.

83. The Coast Guard provided its final disposition of records on August 11.

84. The Coast Guard's response to Questions 2 and 4 of the July 14 Request failed to describe its search methods, and failed to conduct an adequate search. Plaintiffs timely appealed on October 4, attached as Exhibit I. The statutory deadline expired on November 2 – the Coast Guard failed to respond.

***August 23 FOIA Requests – BCMRs***

85. On August 23, 2017, Plaintiffs submitted FOIA requests ("August 23 Requests")

to the Army, Air Force, Navy, and Marine Corps via overnight mail and email.

86. The August 23 Requests seek records related to the disposition of claims with sexual assault elements before the BCMRs, and records related to gender disparities in the branches' internal appeals processes for performance evaluations, and in military discipline generally.

87. Questions 1 and 3 are substantively identical for all the August 23 Requests. Because the remaining questions differ somewhat, however, all August 23 Requests are attached, as Exhibits J-M.

88. To date, neither the Army nor the Air Force have acknowledged the August 23 requests, despite the expiration of the statutory deadline for response on September 21.

89. Both the Navy and the Marine Corps have bifurcated their responses to the August 23 requests. Records from the BCNR are being processed under FOIA tracking numbers DON-NAVY-2017-009992 and DON-USMC-2017-009979, respectively, and records from other custodians are being processed under FOIA tracking numbers DON-NAVY-2017-009980 and DON-USMC-2017-009985.

90. On October 2, the Marine Corps provided a partial response to Plaintiffs' August 23 request under FOIA tracking number DON-USMC-2017-009985 but has not yet responded to the remainder of Plaintiffs' August 23 request.

91. The Navy provided a partial disposition to Plaintiffs' August 23 request under FOIA tracking number DON-NAVY-2017-009980 on October 12.

92. Plaintiffs timely appealed the Navy's partial disposition on November 2. The appeal letter is attached as Exhibit N.

93. The Navy and Plaintiffs agreed to make good faith modifications to paragraph in the requests pertaining to records from the BCNR – the requests being processed under FOIA tracking numbers DON-NAVY-2017-009992 and DON-USMC-2017-009979.

94. In a phone conversation on October 23, Plaintiffs agreed to modify the requests by accepting data only, and no other types of records, as responsive to their requests. Plaintiffs also agreed to limit the time period from which they seek records to fiscal year 2011 through the present.

95. Notwithstanding these modifications, the Navy has failed to produce responsive records for these requests promptly.

96. Additionally, for other, unmodified paragraphs, the Navy claims the information is “not maintained,” but did not provide Plaintiffs with any information about the search methods that led it to that claim. The statutory deadline for response expired on December 4. The Navy did not respond.

#### **CLAIMS FOR RELIEF**

97. Plaintiffs repeat and incorporate every allegation contained in paragraphs 1-96 as if set forth here in full.

98. Defendants’ failure to notify Plaintiffs within 20 days (excepting Saturdays, Sundays, and legal public holidays) whether it will comply with their requests violated their rights to records under 5 U.S.C. § 552(a)(6)(A) and 5 U.S.C. § 552(a)(3)(A).

99. Defendants’ failure to release responsive, non-exempt records violated Plaintiffs’ right to those records under 5 U.S.C. § 552(a)(3)(A).

100. Defendants’ failure to make a reasonable search for responsive records violated Plaintiffs’ rights under 5 U.S.C. § 552(a)(3)(C).



101. Defendants' withholding of responsive records under 5 U.S.C. § 552(b)(6) violated Plaintiffs' rights under 5 U.S.C. § 552(a)(3)(C).

**REQUESTED RELIEF**

WHEREFORE, Plaintiffs Protect Our Defenders and Connecticut Veterans Legal Center respectfully request that this Court:

1. Order Defendants to conduct a reasonable search for records responsive to their requests;
2. Order Defendants to disclose and release the requested records in their entireties;
3. Order Defendants to grant a full fee waiver to Plaintiffs;
4. Provide for expeditious proceedings in this action;
5. Award Plaintiffs costs and reasonable attorney's fees in this action as provided by 5 U.S.C. § 552(a)(1)-(2); and
6. Grant any other and further relief the Court deems appropriate.

Dated: December 13, 2017  
New Haven, CT

Respectfully submitted,

By: /s/ Michael J. Wishnie  
Meghan Brooks, Law Student Intern\*  
Alyssa Peterson, Law Student Intern\*  
Giovanni Sanchez, Law Student Intern\*  
Michael J. Wishnie, Supervising Attorney, ct27221  
Jerome N. Frank Legal Services Organization  
Veterans Legal Services Clinic  
Yale Law School  
P.O. Box 209090  
New Haven, CT. 06520-9090  
Tel: (203) 432-4800  
michael.wishnie@ylsclinics.org

*\*Motion for law student appearance forthcoming*

*Counsel for Plaintiffs*