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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16

17 SHERRILL FARRELL, JAMES
GONZALES, HAYDEN POWELL,
18 JULIANNE "JULES" SOHN, STEPHAN
"LILLY" STEFFANIDES, individually
19 and on behalf of all others similarly
situated,

20 Plaintiffs,

21 v.

22 UNITED STATES DEPARTMENT OF
DEFENSE; LLOYD J. AUSTIN III,
23 Secretary, United States Department of
Defense, in his official capacity;
24 CHRISTINE WORMUTH, Secretary,
United States Army, in her official
25 capacity; CARLOS DEL TORO, Secretary,
United States Navy, in his official capacity;
26 FRANK KENDALL, Secretary, United
States Air Force, in his official capacity;

27 Defendants.
28

Case No. 3:23-cv-04013-JCS

CIVIL RIGHTS ACTION

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

1 **I. NATURE OF THE CASE**

2 1. In the Congressional Cemetery in Washington, DC stands the gravestone of Leonard
3 Matlovich, an American Vietnam War veteran. His gravestone reads: “When I was in the military
4 they gave me a medal for killing two men and a discharge for loving one.” That is the plight of lesbian,
5 gay, bisexual, transgender, queer/questioning, gender non-conforming, nonbinary, and intersex
6 (“LGBTQ+”) veterans discharged under “Don’t Ask, Don’t Tell” (“DADT”) and its predecessor
7 policies, the discriminatory impacts of which still have not been remedied over a decade after its
8 official repeal. The U.S. Armed Forces allows that discrimination to live on in the discharge papers
9 carried by LGBTQ+ veterans, denying them privacy, benefits, and pride in their service.

10 2. The U.S. Government has long acknowledged the vital role of military veterans and
11 honored their incomparable sacrifices. Across region, party affiliation, and presidential
12 administration, government leaders speak with one voice when they describe the debt of gratitude our
13 nation owes to its military veterans.

14 3. In 1983, President Ronald Reagan declared that “veterans know better than anyone else
15 the price of freedom, for they’ve suffered the scars of war. We can offer them no better tribute than
16 to protect what they have won for us. That is our duty. They have never let America down. We will
17 not let them down.”

18 4. In 1999, President Bill Clinton recognized that “we must also do more to be faithful to
19 our veterans when their service is over. President Theodore Roosevelt once said, anyone good enough
20 to shed blood for his country is good enough to be given a square deal afterward.”

21 5. Since repealing DADT in 2010, the Government has recognized and condemned the
22 decades of discriminatory policies it enforced against LGBTQ+ veterans.

23 6. Despite these acknowledgments, LGBTQ+ veterans—including Plaintiffs Sherrill
24 Farrell, James Gonzales, Hayden Powell, Jules Sohn, Lilly Steffanides, and thousands of others who
25 were involuntarily discharged under anti-LGBTQ+ policies—continue to combat the effects of this
26 discrimination.

27 7. Veterans who were discharged for their actual or perceived sexual orientation often
28 received discharge paperwork, the Form DD-214, that (1) identifies their actual or perceived sexual

1 orientation as the reason for their discharge, (2) burdens them with discharge rankings below
2 Honorable, and (3) bars them from reenlisting. Discharge paperwork bearing these markers carries
3 the legacy of the anti-LGBTQ+ policies that the military has now disavowed. The DD-214s issued to
4 LGBTQ+ veterans upon discharge were discriminatory when issued and continue to violate these
5 veterans' constitutional rights to this day.

6 8. The discriminatory effects of these DD-214s are not in dispute. On September 20,
7 2021, the Department of Veterans Affairs ("VA") Assistant Secretary for Public Affairs, Kayla
8 Williams, published a blog post in which the VA "recognize[d] the trauma caused by the military's
9 decades-long policy of discrimination against LGBTQ+ people" and represented that "the Biden
10 administration and [VA] Secretary [Denis] McDonough are taking the steps necessary to begin
11 addressing the pain that such policies have created."

12 9. As recently as September 20, 2023, Defendant and Secretary of Defense Lloyd J.
13 Austin III acknowledged that LGBTQ+ service members "were discharged from the military based on
14 their sexual orientation – and for many this left them without access to the benefits and services they
15 earned."

16 10. Over the decade following the repeal of DADT, the Government has taken no steps to
17 correct this discrimination systematically. Instead, it directs LGBTQ+ veterans to a pre-existing
18 record correction and discharge upgrade process to individually request modification of their records.
19 This widely criticized process requires veterans to initiate lengthy individual actions (including the
20 extended process of obtaining military records) and demands that veterans prove discrimination
21 occurred, even though the Government has already conceded both the discriminatory nature of its
22 policies and the pernicious effects.

23 11. Requiring LGBTQ+ veterans to first bear the stigma and discriminatory effects of
24 carrying indicators of sexual orientation on their DD-214s, and then navigate a broken record
25 correction process to seek resolution, violates their constitutional rights to equal protection,
26 informational privacy, property, and due process protected by the Fourteenth and Fifth Amendments
27 to the U.S. Constitution.

28 12. The service of LGBTQ+ veterans deserves respect and honor equal to that of other

1 veterans. LGBTQ+ veterans are entitled to relief from the Government's ongoing discrimination
2 through the removal of separation narratives and codes that identify their sexual orientation,
3 modification of codes that prevent re-enlistment, and upgrades to their discharge statuses as needed.

4 **II. JURISDICTION AND VENUE**

5 13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs
6 seek redress for violations of the Fourteenth and Fifth Amendments to the U.S. Constitution.

7 14. The Court has authority to grant declaratory and injunctive relief pursuant to the
8 Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, Rule 57 of the Federal Rules of Civil Procedure,
9 and 5 U.S.C. § 702.

10 15. Venue is proper in the U.S. District Court for the Northern District of California
11 pursuant to 28 U.S.C. § 1391(e)(1)(C) because at least one plaintiff resides in the District.

12 **III. PARTIES**

13 16. Plaintiff Sherrill Farrell (she/her pronouns) is a 62-year-old white veteran of the U.S.
14 Navy. She lives in McQueeney, Texas. Plaintiff Farrell hoped to spend twenty years in the military
15 and then to pursue higher education after completing her service. Plaintiff Farrell was discharged in
16 1986 after only ten months because of her sexual orientation. Plaintiff Farrell's sexual orientation is
17 identified on her DD-214. She has a discharge status of Other Than Honorable. Plaintiff Farrell would
18 be eligible for additional benefits with an Honorable discharge status.

19 17. Plaintiff James Gonzales (he/him pronouns) is a 58-year-old Latino veteran of the U.S.
20 Navy. He lives in Los Angeles, California. As evidenced by the Navy's positive performance review
21 of Plaintiff Gonzales while in service, Plaintiff Gonzales demonstrated strong leadership skills as a
22 Navy signalman and had the potential to become a petty officer. However, Plaintiff Gonzales was
23 discharged in 1986 because of his sexual orientation. Plaintiff Gonzales's sexual orientation is
24 identified on his DD-214. He has a discharge status of Other Than Honorable. Plaintiff Gonzales
25 would be eligible for additional benefits with an Honorable discharge status.

26 18. Plaintiff Hayden Powell (she/her pronouns) is a 45-year-old white veteran of the U.S.
27 Air Force. She lives in Spokane, Washington. Plaintiff Powell excelled during her time in service.
28 She served as Element Leader, Assistant Bay Chief and Co-Captain of the Flag Security team, and

1 Base Operator at Malmstrom Air Force Base. Plaintiff Powell was discharged in 1999 because of her
2 sexual orientation. Plaintiff Powell's sexual orientation is identified on her DD-214. She has an
3 Uncharacterized discharge status. Plaintiff Powell would be eligible for additional benefits with an
4 Honorable discharge status.

5 19. Plaintiff Julianne "Jules" Sohn (she/they pronouns) is a 47-year-old Korean-American
6 veteran of the U.S. Marine Corps. She lives in Torrance, California. After successfully completing
7 Officer Candidate School, Plaintiff Sohn was deployed overseas to Okinawa, Japan as a Public Affairs
8 Officer for a one-year unaccompanied tour. She re-activated from Inactive Ready Reserves in 2005
9 for an overseas deployment to Iraq as part of a new Civil Affairs group. After serving for eight years,
10 Plaintiff Sohn was discharged in 2008 because of her sexual orientation. Plaintiff Sohn's sexual
11 orientation is identified on her discharge paperwork including, based on information and belief, her
12 DD-214. She has a discharge status of Honorable.

13 20. Plaintiff Stephan "Lilly" Steffanides (they/them pronouns) is a 55-year-old white
14 veteran of the U.S. Navy. They live in San Francisco, California. They enlisted in the U.S. Navy at
15 nineteen years old following the century-long tradition of military service in their family. Plaintiff
16 Steffanides hoped for a lifetime military career. Plaintiff Steffanides was discharged from the Navy
17 in 1989 on the basis of their sexual orientation. Plaintiff Steffanides's DD-214 identifies their sexual
18 orientation. Plaintiff Steffanides has a discharge status of Other Than Honorable. Plaintiff Steffanides
19 would be eligible for additional benefits with an Honorable discharge status.

20 21. Defendant Department of Defense is the federal department charged with coordinating
21 and supervising all agencies and functions of the government relating to the military. It was
22 responsible for issuing and implementing DADT and related policies. The organization and functions
23 of the Department of Defense are set forth in Title 10 of the U.S. Code. It exercises command and
24 control over the Army, Marine Corps, Navy, Air Force, Space Force, and at certain times, the Coast
25 Guard.

26 22. Defendant Secretary Lloyd J. Austin III is the current U.S. Secretary of Defense,
27 overseeing the Department of Defense. Secretary Austin is named solely in his official capacity.

28 23. Defendant Christine Wormuth is the current Secretary of the Army, overseeing all

1 matters relating to the Department of the Army. The U.S. Army conducts military operations on land.
2 The Secretary of the Army has authority to correct military records of the U.S. Army pursuant to 10
3 U.S.C. § 1552(a) (2018) and 32 C.F.R. § 581.3 (2023). Secretary Wormuth is named solely in her
4 official capacity.

5 24. Defendant Carlos Del Toro is the current Secretary of the Navy, overseeing all matters
6 relating to the Department of the Navy. The Department of the Navy conducts military operations at
7 sea. The Secretary of the Navy has the authority to correct military records of the U.S. Navy and U.S.
8 Marine Corps pursuant to 10 U.S.C. § 1552(a) and 32 C.F.R. § 723.1 (2023). Secretary Del Toro is
9 named solely in his official capacity.

10 25. Defendant Frank Kendall is the current Secretary of the Air Force, overseeing all
11 matters relating to the Department of the Air Force. The Department of the Air Force conducts military
12 operations by air. The Secretary of the Air Force has the authority to correct military records of the
13 U.S. Air Force pursuant to 10 U.S.C. § 1552(a) and 32 C.F.R. § 865.0 (2023). Secretary Kendall is
14 named solely in his official capacity.

15 **IV. FACTUAL ALLEGATIONS**

16 **A. The Government's History of Discrimination Against LGBTQ+ Service** 17 **Members**

18 26. Through much of its history, the U.S. Armed Forces prohibited non-heterosexual
19 people from serving openly in its ranks. These intentionally discriminatory policies primarily affected
20 LGBTQ+ service members.

21 27. As early as World War I, the Armed Forces prosecuted same-sex sexual behavior.
22 During this time, same sex sexual behavior between men was characterized as criminal behavior and
23 punishable by imprisonment. Between World War I and the end of World War II, some individual
24 branches developed explicit policies excluding people from service on the basis of sexual orientation.

25 28. In 1949, the Department of Defense established a uniform policy on "homosexuality."
26 The memo announcing the policy stated: "[H]omosexual personnel, irrespective of sex, should not be
27 permitted to serve in any branch of the Armed Services in any capacity, and prompt separation of
28 known homosexuals from the Armed Forces be made mandatory."

1 29. In 1950, Congress created the Uniform Code of Military Justice to govern military
2 discipline. Article 125 of the Uniform Code prohibited “unnatural carnal copulation” by service
3 members and was directed at lesbian and gay service members.

4 30. In 1953, President Dwight Eisenhower signed Executive Order 10450, making “sexual
5 perversion” a dismissible offense in all federal employment. The Executive Order likewise targeted
6 service members based on sexual orientation.

7 31. In 1982, the Department of Defense set forth Directive 1332.14 and established
8 mandatory discharge for service members who have “engaged in, attempted to engage in, or solicited
9 another to engage in a homosexual act.” The Directive noted that “[t]he basis for separation may
10 include preservice, prior service, or current service conduct or statements.” In 1986, the Department
11 of Defense issued revised Directive 1332.30, extending Directive 1332.14 to military officers.

12 32. In 1993, Congress passed, and President Bill Clinton signed into law, the policy known
13 as DADT. The law required the military to discharge service members who “engaged in, attempted
14 to engage in, or solicited another to engage in a homosexual act,” if they stated that they were “a
15 homosexual or bisexual, or words to that effect,” or if they “married or attempted to marry a person
16 known to be of the same biological sex.”

17 33. According to the Department of Defense’s May 12, 2023 response to Legal Aid at
18 Work’s 2021 Freedom of Information Act request, between October 1, 1980, and September 20, 2011,
19 **35,801 veterans** received a discharge or separation from service “because of real or perceived
20 homosexuality, homosexual conduct, sexual perversion, or any other related reason.” During the same
21 time period, **29,177 veterans** received the following discharge statuses “because of real or perceived
22 homosexuality, homosexual conduct, sexual perversion, or any other related reason”:

- 23 • General Discharge Under Honorable Conditions: 18,729 veterans
- 24 • Other Than Honorable Discharge: 7,732 veterans
- 25 • Bad Conduct Discharge: 2,714 veterans
- 26 • Dishonorable Discharge: 2 veterans

27 34. As a direct consequence of these discriminatory policies, tens of thousands of veterans
28 were ousted from their respective branches of the Armed Forces on the basis of their perceived or

1 actual LGBTQ+ status.

2 **B. Defendants Memorialized the Government’s Discriminatory Policies in**
3 **Veterans’ DD-214s**

4 35. Upon discharge, veterans receive, along with other discharge paperwork, a Form DD-
5 214. They are instructed that it is the most important service record they will receive. Every DD-214,
6 on its face, implores the recipient to “safeguard it.” The DD-214 contains a “character of service” or
7 discharge status, a “narrative reason for separation,” a “separation code,” and a “reenlistment code.”
8 Plaintiff Steffanides’s DD-214 is included below, with red annotations marking these relevant data
9 points.

10 36. As can be seen in Plaintiff Steffanides’s DD-214 below, they have been given a
11 discharge status (also known as a character of service designation) of “UNDER OTHER THAN
12 HONORABLE CONDITIONS,” a separation code of “GRA,” a reenlistment code of “RE-4,” and a
13 narrative reason for separation that states “Homosexuality – engaged in, attempted to engage in, or
14 solicited another to engage in a homosexual act or acts.”

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CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES THIS IS AN IMPORTANT RECORD SAFEGUARD IT ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

DD FORM 1 JUL 79 214 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE FEB 073 CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, first, middle) **STEPHANIDES, Stephan Michael** 2. DEPARTMENT, COMPONENT AND BRANCH **NAVY - USN** 3. SOCIAL SECURITY NO [REDACTED]

4a. GRADE, RATE OR RANK **AZAR** 4b. PAY GRADE **XI** 5. DATE OF BIRTH [REDACTED] 6. PLACE OF ENTRY INTO ACTIVE DUTY **OAKLAND, CA**

7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND **USS ABRAHAM LINCOLN (CVN 72)** 8. STATION WHERE SEPARATED **USS ABRAHAM LINCOLN (CVN 72) at NORFOLK VA**

9. COMMAND TO WHICH TRANSFERRED **NA** 10. SGLI COVERAGE AMOUNT \$ 000 NONE

11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY (Additional specialty numbers and titles involving periods of one or more years)
AZ - 0000

12. RECORD OF SERVICE	YEAR(s)	MON (s)	DAY (s)
a. Date Entered AD This Period	88	SEP	28
b. Separation Date This Period	89	DEC	22
c. Net Active Service This Period	01	02	28
d. Total Prior Active Service	00	00	00
e. Total Prior Inactive Service	00	00	06
f. Foreign Service	00	00	00
g. Sea Service	00	07	22
h. Effective Date of Pay Grade	89	AUG	25
i. Reserve Oblig. Term Date	NA		

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)

X									
X		X		X					X
X		X		X					X
X		X		X					X

14. MILITARY EDUCATION (Course Title, number weeks, and month and year completed)
Recruit Training, 8 weeks, DEC 89; AZ Class "A" School, 8 weeks, FEB 89;

X		X		X					X
X		X		X					X
X		X		X					X

15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM YES NO 16. HIGH SCHOOL GRADUATE OR EQUIVALENT YES NO 17. DAYS ACCRUED **UNDE**

18. REMARKS
Medical and Dental examination completed on 89DEC20 90 days within discharge from Active Duty.

X		X		X					X
X		X		X					X
X		X		X					X
X		X		X					X
X		X		X					X
X		X		X					X
X		X		X					X

19. MAILING ADDRESS AFTER SEPARATION [REDACTED] 20. MEMBER REQUESTS COPY 6 BE SENT TO **CA** DIR. OF VET AFFAIRS YES NO

21. SIGNATURE OF MEMBER BEING SEPARATED [REDACTED] 22. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN
LTJG W. D. GOODWIN, PRC, USN, ASSPERSOFF BY DIR CO

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION Discharged	24. CHARACTER OF SERVICE (Includes upgrades) UNDER OTHER THAN HONORABLE CONDITIONS
25. SEPARATION AUTHORITY MILPERSMAN 3630400	26. SEPARATION CODE GRA
27. REENLISTMENT CODE RE-4	28. NARRATIVE REASON FOR SEPARATION HOMOSEXUALITY - engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts
29. DATES OF TIME LOST DURING THIS PERIOD TL: 89APR17 to 89APR30	30. MEMBER REQUESTS COPY 4 <input type="checkbox"/> INITIALS

S/N 0102-LF-000-2140 SERVICE - 7

1 37. A service member’s “character of service” contains one of the following discharge
2 statuses:

- 3 • Honorable Discharge;
- 4 • General Discharge Under Honorable Conditions;
- 5 • Other Than Honorable Discharge;
- 6 • Uncharacterized Discharge, or Entry-level Separation;
- 7 • Medical Separation;
- 8 • Separation For Convenience of the Government;
- 9 • Bad Conduct Discharge; or
- 10 • Dishonorable Discharge.

11 38. A service member’s “narrative reason for separation” provides a description of why the
12 service member’s service ended. These narratives vary, but for veterans discharged for their perceived
13 or actual sexual orientation, this “narrative reason for separation” often states they were discharged
14 because of “homosexuality,” “homosexual admission,” “homosexual conduct,” “attempt to engage in
15 homosexual conduct,” “homosexual marriage or attempted marriage,” “propensity to engage in
16 homosexual acts,” “sexual orientation,” or “bisexual[ity],” among other reasons that reference sexual
17 orientation.

18 39. Every DD-214 also includes a “separation code,” which indicates additional separation
19 information—from “mental disorder” to “hardship” to “pregnancy” to “misconduct.” For service
20 members discharged for perceived or actual sexual orientation, their DD-214s often contain a
21 separation code associated with sexual orientation, such as “homosexuality,” “homosexual conduct,”
22 or “sexual perversion.” The separation codes are easily decoded with a quick search on the internet
23 to find out their meaning and include:

Separation Code	Stated Meaning
BLC	Homosexuality
BML	Homosexuality

Separation Code	Stated Meaning
BRA	Homosexual Conduct (Acts)
BRB	Homosexual Conduct (Statement)
BRC	Homosexual Conduct (Marriage or Attempted Marriage)
DKL	Misconduct (Sexual Perversion)
DLC	Homosexuality
GKC	Homosexuality
GKL	Misconduct (Sexual Perversion)
GLC	Homosexuality
GLL	Sexual Perversion
GML	Homosexuality
GRA	Homosexual Conduct (Acts)
GRB	Homosexual Conduct (Statement)
GRC	Homosexual Conduct (Marriage or Attempted Marriage)
HKL	Misconduct (Sexual Perversion)
HLC	Homosexuality
HRA	Homosexual Conduct (Acts)
HRB	Homosexual Conduct (Statement)
HRC	Homosexual Conduct (Marriage or Attempted Marriage)
HWL	Homosexuality
JB	Court Martial (Homosexual Conduct)
JJB	Court Martial (Homosexual Conduct)
JKC	Homosexuality
JKL	Misconduct (Sexual Perversion)
JLC	Homosexuality
JLL	Sexual Perversion
JMF	Sexual Perversion

Separation Code	Stated Meaning
JRA	Homosexual Conduct (Acts)
JRB	Homosexual Conduct (Statement)
JRC	Homosexual Conduct (Marriage or Attempted Marriage)
KL	Misconduct (Sexual Perversion)
KRA	Homosexual Conduct (Acts)
KRB	Homosexual Conduct (Statement)
KRC	Homosexual Conduct (Marriage or Attempted Marriage)
RA	Homosexual Conduct (Acts)
RC	Homosexual Conduct (Marriage or Attempted Marriage)

40. Finally, every DD-214 contains a “reenlistment code.” Reenlistment codes 1 through 4 (with subparts) indicate the veteran’s ability to reenlist in military service after discharge. A reenlistment code of RE-4 bars the veteran from reenlisting in the military unless they obtain an individual waiver. RE-4 reenlistment codes were often given in conjunction with discriminatory narrative reasons for separation or separation codes.

41. These narrative reasons for separation and separation codes that indicate actual or perceived “homosexuality” on veterans’ DD-214s are permanent remnants of DADT and its predecessors. They memorialize discharges based on actual or perceived “homosexuality.” The Government has acknowledged as much. *See* Section IV.E, *infra*. Accordingly, the continued existence of these sexual-orientation related narratives and separation codes on a veterans’ DD-214s is, in and of itself, continuously discriminatory.

42. The Government’s discriminatory dismissal of LGBTQ+ service members on the basis of their actual or perceived “homosexuality” was unconstitutional. Likewise, the Government’s issuance of DD-214 forms with discriminatory narrative reasons for separation, separation codes, and reenlistment bars is unconstitutional. LGBTQ+ veterans are not treated equally to other veterans, who are issued dismissal paperwork free of references to their sexual orientation.

1 **C. The Government’s Ongoing Discriminatory Treatment of LGBTQ+ Veterans**
2 **Has Wide-Ranging Ramifications**

3 43. The Government’s discriminatory discharges and resulting discharge paperwork have
4 ripple effects throughout the lives of LGBTQ+ veterans.

5 44. These discriminatory discharges and resulting discriminatory DD-214s affect veterans
6 on a deeply personal level. Plaintiff Sohn, who has worked in law enforcement for the majority of her
7 adult life, was notified by a Colonel that she was being investigated for allegedly violating DADT.
8 During this call, Plaintiff Sohn was notified of her rights under Article 31 of the Uniform Code of
9 Military Justice, the military’s functional equivalent to Miranda rights. Despite her exemplary record
10 and numerous accolades over her eight years of service, Plaintiff Sohn was made to feel like a criminal,
11 investigated, and then discharged solely because of her sexual orientation. Plaintiff Farrell was never
12 given the chance to prove that she was committed to and capable of the kind of esteemed military
13 career her father and grandfather had before her. Plaintiff Gonzales felt unable to tell his family—
14 including his father, a Marine—how or why he was discharged and still finds celebrations like
15 Veterans Day and Memorial Day to be particularly painful reminders of the circumstances surrounding
16 his discharge.

17 45. Discriminatory DD-214s further isolate LGBTQ+ veterans from the veteran
18 community, which is typically an important source of social and emotional support among those with
19 shared lived experiences. For example, Plaintiff Gonzales has avoided associating with veterans’
20 groups or communicating with any individuals with whom he served to avoid discussions pertaining
21 to his time in the service, the circumstances surrounding his discharge, and his discharge status.

22 46. LGBTQ+ veterans with discriminatory DD-214s are deprived of society’s admiration
23 for their service. In addition to federally issued benefits—discussed further below—state and local
24 governments and non-governmental entities commonly offer veterans special benefits as a symbol of
25 their admiration.

26 47. For example, in some states, veterans’ service records can replace requisite training for
27 other forms of licensure, like private investigation work or security work. Likewise, many states
28 provide veterans the opportunity to have a veteran designation on their state ID or driver’s license.

1 Plaintiff Farrell frequently encounters veterans with this designation on their driver's licenses, as
2 Texas offers this among its many state-sponsored benefits for veterans. Every time Plaintiff Farrell
3 meets someone with this designation, she thanks them for their service. This designation requires an
4 Honorable discharge or a General Discharge Under Honorable Conditions, meaning that Plaintiff
5 Farrell cannot receive this symbol on her own driver's license because of her discriminatory DD-214.
6 If her discharge status is upgraded, Plaintiff Farrell plans to apply for this designation as a symbol of
7 her service.

8 48. Non-governmental entities offer a variety of benefits to veterans, including discounts
9 at stores and restaurants. These benefits typically require proof of service, which means a veteran
10 with a discriminatory DD-214 will reveal their sexual orientation if they provide proof of military
11 service. Many LGBTQ+ veterans with a discharge status below Honorable are excluded altogether.

12 49. These tangible benefits, representing the social support and sense of dignity accorded
13 to veterans, are denied to those who are intentionally isolated after the Government's discriminatory
14 discharge. The harm of discriminatory DD-214s does not stop at the veterans' discharge. It is
15 pervasive and continues to harm a veteran's pride in service, honor, and sense of belonging among the
16 veteran community and society at large.

17 **D. The Government's Repeal of DADT**

18 50. On December 15, 2010, Congress voted to repeal the law establishing DADT.
19 President Barack Obama signed the bill on December 22, 2010, and the repeal became effective on
20 September 20, 2011.

21 51. In remarks given on December 22, 2010, then-Vice President Joe Biden stated that
22 DADT "weaken[ed] our national security, diminished our ability to have military readiness, and
23 violates the fundamental American principle of fairness and equality." He added that repealing DADT
24 "is both morally and militarily simply the right thing to do" and that repeal was "fully supported by
25 those within the military who are charged with implementing it."

26 52. Also on December 22, 2010, President Obama stated:

27 I want to speak directly to the gay men and women currently serving in our
28 military. For a long time your service has demanded a particular kind of
sacrifice. You've been asked to carry the added burden of secrecy and isolation.

1 And all the while, you've put your lives on the line for the freedoms and
2 privileges of citizenship that are not fully granted to you. You're not the first
3 to have carried this burden, for while today marks the end of a particular
struggle that has lasted almost two decades, this is a moment more than two
centuries in the making.

4 53. Upon the repeal of DADT, the Department of Defense issued policy guidance that
5 applied to all military personnel serving in the Armed Forces. The guidance dictated that “[s]ervice
6 members will no longer be subject to administrative separation based solely on legal homosexual acts,
7 a statement by a [s]ervice member that he or she is a homosexual or bisexual (or words to that effect),
8 or marriage or attempted marriage to a person known to be of the same biological sex.” Moreover,
9 any service member who was already being processed for separation or investigated based solely on
10 “legal homosexual acts” had their “separation cancelled,” and they “return[ed] to duty.” The guidance
11 also required that any former service member who was discharged solely for legal “homosexual” acts
12 be allowed to re-enter the Armed Forces.

13 54. Concurrently, the Department of Defense released internal policies to partially address
14 the effects of DADT and its precursor policies. The Under Secretary of Defense for Personnel and
15 Readiness, Dr. Clifford L. Stanley, issued a memorandum to the Secretaries of the Military
16 Departments establishing that the baseline was to grant veterans’ requests for discharge upgrades
17 following the repeal of DADT. In the memorandum, Secretary Stanley stated that as of the repeal
18 date:

19 Service [Discharge Review Boards] should normally grant requests to change
20 the narrative reason for a discharge (the change should be to “Secretarial
21 Authority” (Separation program Designator Code (SPD) code JFF)), requests
22 to re-characterize the discharge to honorable, and/or requests to change the
23 reentry code to an immediately-eligible-to-reenter category . . . when both of
24 the following conditions are met: (1) the original discharge was based solely on
DADT or a similar policy in place prior to enactment of DADT and (2) there
were no aggravating factors in the record, such as misconduct. Although each
request must be evaluated on a case-by-case basis, the award of an honorable
or general discharge should normally be considered to indicate the absence of
aggravating factors.

25 55. Secretary Stanley’s memo did not modify the existing record correction and discharge
26 upgrade process and, in the years following, only a relative handful of veterans have sought record
27 corrections and discharge upgrades.
28

1 **E. Government Leaders Acknowledge that Discriminatory Effects Remain**

2 56. Since the repeal of DADT, members of Congress, government agencies, and state
3 governments have acknowledged the continuing discriminatory effects of DD-214s containing
4 indicators of sexual orientation.

5 57. In 2014, the Restore Honor to Service Members Act (S. 1956) was introduced in the
6 U.S. Senate and sought to “direct the Secretary of Defense to review the discharge characterization of
7 former members of the Armed Forces who were discharged by reason of the sexual orientation of the
8 member, and for other purposes.” Among other provisions, it sought to ensure the review process was
9 “simple and straightforward” and did not treat “consensual sexual conduct” as an “aggravating
10 circumstance[s]” precluding a discharge upgrade. It did not become law.

11 58. In September 2021, sixty-two Congressmembers introduced House Resolution 5170
12 for the express purpose of modifying title 38 of the U.S. Code to extend “to former members of the
13 Armed Forces, discharged on the basis of sexual orientation or gender identity, certain benefits
14 furnished by the Secretary of Veterans Affairs.” As the bill’s sponsor, Congressman Chris Pappas of
15 New Hampshire, stated:

16 Veterans and their families deserve our thanks and gratitude for their service
17 and sacrifice. However, a double standard continues to persist for LGBTQ+
18 servicemembers and veterans who suffered from government-sponsored
19 discriminatory policies simply because of who they are. As we near the tenth
20 anniversary of the repeal of “Don’t Ask, Don’t Tell,” it’s long past time that
21 these veterans are afforded the benefits they’ve rightfully earned defending our
22 country This disparity threatens the health and wellbeing of LGBTQ+
23 veterans who are unable to access VA benefits, and it dishonors their service to
24 our country. This legislation will help correct this injustice by guaranteeing VA
25 benefits for LGBTQ+ veterans and ensuring they’re able to receive the care
26 they need.

27 59. The failure of the current discharge upgrade process has become so acute that the VA,
28 a federal agency distinct from the Department of Defense, announced its own makeshift solution with
respect to the benefits that it administers. Citing the widespread experience of LGBTQ+ veterans that
the discharge upgrade process is “onerous,” the VA’s Assistant Secretary for Public Affairs published
a blog post on September 20, 2021, announcing that the VA would no longer deny VA-administered
benefits to veterans with less than Honorable discharges if the reason for their discharge is related to
sexual orientation, gender identity, or HIV status.

1 60. To date, based on information and belief, the VA’s policy change has not yet
2 materialized. There is no publicly available written guidance that identifies who is and who is not
3 eligible for these benefits. Until the policy change is implemented, veterans who were given
4 discharges below Honorable based on their actual or perceived sexual orientation continue to require
5 individualized review before they can receive benefits from the VA. Moreover, changes at the VA
6 will not address other benefits denied to veterans based on discharge status, including financial and
7 educational benefits, veteran preference in federal hiring, and state benefits. Nor do they provide
8 corrections to the DD-214 or changes to discharge upgrades or reentry status.

9 61. Similarly recognizing that the discharge upgrade process is unduly burdensome, the
10 State of California passed a law in September 2022 establishing a grant program for local service
11 providers to educate California veterans about discharge upgrades and assist qualifying California
12 veterans in applying for discharge upgrades. Assembly Bill No. 325 added language to California’s
13 Military and Veterans Code requiring the California Department of Veterans Affairs “to establish the
14 Veteran’s Military Discharge Upgrade Grant program to help fund service providers who, for free or
15 at low cost, will educate veterans about discharge upgrades and assist qualifying veterans in filing
16 discharge applications.” The program “may prioritize veteran recipients of the services, such as
17 prioritizing those who are able to demonstrate their less than honorable characterization of service was
18 connected to a mental health condition, traumatic brain injury, sexual assault or harassment, or sexual
19 orientation.”

20 62. One month after this action was filed, on September 20, 2023, as part of a “new
21 initiative” to “better reach affected veterans,” Deputy Secretary of Defense Kathleen Hicks released a
22 statement acknowledging the continuing effects of these discriminatory discharges:

23 [D]ecades of laws and policies that forced servicemembers to hide who they are
24 left a long, cruel legacy . . . not just in terms of the individual traumas wrought
25 upon servicemembers and family members, but also as tens of thousands of
26 soldiers, sailors, airmen, and marines were expelled from the military. And we
27 know there are cases when LGBTQ+ servicemembers were given discharges
28 that may have denied them access to veterans’ benefits like home loans,
healthcare, GI Bill tuition assistance, and even some government jobs.

...

And so we know the task is still unfinished. More work remains to reach every

1 veteran whose life was impacted by “Don’t Ask, Don’t Tell.”

2 63. In her statement, Deputy Secretary Hicks stated that the Department of Defense would
3 “for the first time, begin proactively reviewing military records of veterans discharged because of their
4 sexual orientation, who may be eligible for discharge upgrades, but have not yet applied.”

5 64. Likewise, Secretary Austin released a statement on September 20, 2023:

6 For decades, our LGBTQ+ Service members were forced to hide or were
7 prevented from serving altogether. Even still, they selflessly put themselves in
8 harm’s way for the good of our country and the American people.
9 Unfortunately, too many of them were discharged from the military based on
10 their sexual orientation – and for many this left them without access to the
benefits and services they earned. Over the past decade, we’ve tried to make it
easier for Service members discharged based on their sexual orientation to
obtain corrective relief. While this process can be difficult to navigate, we are
working to make it more accessible and efficient.

11 65. As of the filing of this First Amended Complaint, the discharge upgrade process has
12 not been modified, and the Department of Defense has not provided any timeline for its plan to begin
13 “proactively reviewing military records.” Additionally, Deputy Secretary Hicks’s statement
14 exclusively references Don’t Ask, Don’t Tell, and does not state any plans to address discharges based
15 on sexual orientation that occurred under DADT’s predecessor policies.

16 66. Moreover, as made clear on the Department of Defense “Spotlight” webpage on this
17 issue, the Department of Defense is focused on “efforts to reach LGBTQ+ veterans discharged under
18 less than honorable conditions for homosexual conduct.” This proposal does not impact veterans with
19 discriminatory discharge paperwork who received Honorable discharges.

20 **F. The Effects of the Discriminatory DD-214s**

21 67. The Government’s continued failure to remediate the discriminatory effects of DD-
22 214s containing indicators of sexual orientation, which touch on nearly every aspect of a veteran’s life
23 after service, constitutes ongoing discrimination and a deprivation of these veterans’ constitutional
24 rights.

25 68. *Only* LGBTQ+ veterans with discriminatory DD-214s have their sexual orientation and
26 information pertaining to consensual sexual activity and/or their private romantic lives and marriages
27 on their DD-214s.

28 69. The discriminatory DD-214s carry additional burdens for the Discharge Upgrade

1 Subclass (defined below) caused by the less than Honorable discharge status they received, which bars
2 them from significant benefits available to veterans, including GI Bill loans, health care, preferential
3 hiring, and more.

4 70. Some, but certainly not all, harms caused by the Government's continued failure to
5 revise discriminatory DD-214s are discussed herein.

6 **1. Invasion of Privacy**

7 71. The Government provides DD-214s to all veterans after their service concludes,
8 knowing that those papers will be the veterans' primary record of service. As such, the Government
9 knows or should know those papers are intended to be shown to third parties.

10 72. For veterans discharged under DADT and its predecessor policies, the Government has
11 included their private information on their DD-214 by including, at a minimum, indicators of their
12 actual or perceived sexual orientation. For some, the Government included additional private
13 information about those veterans' sexual activities and/or details about their personal lives.

14 73. In contrast, heterosexual veterans do not have *any* indication of their sexuality and/or
15 details about their personal lives on their DD-214s.

16 74. By including this private information on their proof of military service, the Government
17 has unnecessarily invaded these veterans' private lives and infringed their right to keep sexual and
18 relationship information private. For these veterans, proving their military service can therefore have
19 the immediate effect of disclosing the veteran's sexual orientation (*i.e.*, outing them).

20 75. Plaintiff Farrell was required to show her DD-214 to her employer as part of the
21 application process for her job. Because her sexual orientation is listed on her DD-214, Plaintiff Farrell
22 did not have the choice other applicants had of whether or when to disclose her sexual orientation to
23 her employer. Plaintiff Farrell is grateful to have an accepting work environment and understands
24 that, because of her DD-214, she would not have the option of not discussing her sexual orientation
25 with her employer if she felt it would expose her to discrimination.

26 **2. Denial of Access to Benefits and Hiring Advantages**

27 76. Both state and federal governments have created a vast network of potential benefits
28 for veterans including healthcare benefits, educational benefits, and financial benefits (*e.g.*, lending

1 opportunities). By design, these benefits touch virtually every aspect of veterans' lives. Receipt of
2 these benefits requires proving military service by disclosing a DD-214. Many benefits depend upon
3 the veteran's discharge status and other information provided on the veteran's DD-214.

4 77. Discharge status is critically important for accessing these benefits. An Honorable
5 discharge entitles veterans to all available federal and state benefits, including healthcare benefits
6 through VA hospitals, educational benefits through the GI Bill, housing benefits, unemployment
7 benefits, and many others. Anything less than an Honorable discharge often bars service members
8 from access to benefits. Thousands of veterans discharged for their actual or perceived sexual
9 orientation often received a less than Honorable discharge or had their discharge flagged with
10 separation codes publicly associated with "homosexuality," denying them benefits they rightfully
11 earned based on their service.

12 **a. Veterans' Healthcare Benefits**

13 78. Healthcare benefits are among the most critical benefits provided to veterans. But
14 veterans with discharge statuses below Honorable may be barred from receiving health care from the
15 VA.

16 79. If a veteran's discharge was not characterized as under Honorable conditions, then VA
17 benefits are not available unless the VA determines the veteran's specific discharge was "under
18 conditions other than dishonorable." In other words, veterans lacking an Honorable discharge are
19 generally ineligible for VA benefits, unless they seek a case-by-case determination from the VA that
20 they are Honorable for VA purposes.

21 80. Plaintiff Gonzales, for example, has been unable to obtain healthcare benefits through
22 the VA. Plaintiff Gonzales is HIV positive. Though a veteran with this diagnosis would generally be
23 eligible for ongoing care from the VA, Plaintiff Gonzales is ineligible for VA benefits because of his
24 discharge status. Thus, for about thirty years, Plaintiff Gonzales has instead received sporadic medical
25 care through a variety of nonprofit agencies. The Navy's failure to upgrade his discharge status has
26 thus resulted in inconsistent medical care, causing Plaintiff Gonzales's health to suffer.

27 81. Similarly unable to access VA health care, Plaintiff Powell did not have health
28 insurance for approximately 13 years, during which time she was diagnosed with a medical condition

1 that required two surgeries.

2 **b. Other Veterans' Benefits**

3 82. Eligible veterans can access valuable education benefits. GI Bill benefits provide
4 financial support to veterans to pay for college, graduate school, and training programs. Both the
5 Montgomery GI Bill program and the Post-9/11 GI Bill program require that a veteran's discharge
6 characterization be Honorable.

7 83. Plaintiff Gonzales, for example, was unable to pursue higher education because the
8 Navy imposed on him an Other Than Honorable discharge on the basis of his sexual orientation.
9 Plaintiff Gonzales had planned to pursue a bachelor's degree after his time in service. However,
10 because of his discharge status, Plaintiff Gonzales was not eligible for the GI Bill benefits he needed
11 to afford college.

12 84. Plaintiff Farrell also envisioned taking advantage of federal education benefits for
13 veterans and pursuing higher education after her service. However, because of her Other Than
14 Honorable discharge status, she was also ineligible for the GI Bill benefits she needed to afford college.
15 Plaintiff Farrell intends to apply for various veterans' benefits if she receives a discharge upgrade.

16 85. Plaintiff Powell enrolled at Washington State University after her discharge from the
17 Air Force. She was not eligible for GI Bill benefits because of her discharge status. Instead, she
18 worked part-time and accrued loans to supplement educational grants and merit scholarships to pay
19 for her education.

20 86. For other programs, including compensation benefits, pension benefits, home loan
21 benefits, Service-Disabled Veterans Insurance, and Veterans' Mortgage Life Insurance, a veteran's
22 discharge characterization must be Honorable, Under Honorable Conditions, or General. A veteran's
23 less than Honorable discharge can bar them from accessing these key services.

24 87. Likewise, veterans' rights under the Uniformed Services Employment and
25 Reemployment Rights Act of 1994 also only attach if they have an Honorable, Under Honorable
26 Conditions, or General discharge. Many other laws that provide benefits to veterans or their families
27 are impacted by the veteran's discharge status. For example, a family member who wants to provide
28 care for an injured service member can only take job-protected leave under the Family and Medical

1 Leave Act to provide such care when the veteran has received an Honorable discharge.

2 88. Plaintiff Steffanides sought assistance from a veteran affairs organization when they
3 were experiencing homelessness. They were told they did not qualify for temporary housing because
4 of their discharge status and because their DD-214 included a narrative reason that read
5 “Homosexuality – engaged in, attempted to engage in, or solicited another to engage in a homosexual
6 act or acts.” For nearly twenty-four years, Plaintiff Steffanides experienced homelessness and lived
7 on the streets.

8 **c. Veterans’ Future Employment**

9 89. When entering the job market after their discharge, veterans are often asked on job
10 applications whether they served in the military and their discharge status. Accordingly, to submit an
11 employment application, veterans with discriminatory DD-214s must either (1) include their time in
12 the service and their discharge status through disclosure of their DD-214s—necessarily disclosing
13 their sexual orientation—or (2) leave resume gaps to avoid disclosing private information that their
14 prospective employer would otherwise not be privy to.

15 90. Veterans with discriminatory DD-214s also lose out on hiring preferences given to
16 other veterans. For example, the federal government maintains a formal veterans’ preference policy
17 prioritizing the applications of eligible veterans over other job seekers for new appointments in the
18 competitive service (federal government positions subject to the civil service laws) and many positions
19 in the excepted service (for which federal agencies set their own qualification requirements and which
20 are not subject to the civil service laws). The Federal Office of Personnel Management has
21 characterized veterans’ preference policies as a recognition of veterans’ sacrifice and “the economic
22 loss suffered by citizens who have served their country in uniform,” and stated that such policies
23 “restore[] veterans to a favorable competitive position for Government employment.” These jobs ask
24 for copies of the veteran’s DD-214. Veterans’ preference is available only to veterans discharged
25 “under honorable conditions.”

26 91. The vast majority of state governments likewise have preferential hiring policies for
27 veterans. These also require disclosure of the DD-214 and are only for those with an Honorable
28 discharge.

1 92. Plaintiff Powell applied for a job and was advised that the employer would not award
2 points on her job application because of her DD-214. Plaintiff Powell also understood she was
3 ineligible for certain veteran-status pay increases available to other veterans.

4 93. All Sexual Orientation Indicator Class members (defined below) must disclose their
5 sexual orientation to take advantage of these benefit. And many LGBTQ+ veterans who received a
6 discharge status below Honorable—but suffered the same economic loss from their service—are
7 deprived of an expressly codified employment advantage in nearly every government sector.

8 3. Discharge Upgrade Process

9 94. By statute, there are two ways veterans can obtain records corrections and discharge
10 upgrades—individually by each veteran’s own initiative or as a group by Defendants’ initiative.

11 95. A veteran who seeks to change the narrative reason for their discharge or the discharge
12 code, recharacterize their discharge, or change the re-enlistment code on their DD-214 generally must
13 submit a request to the Discharge Review Board or Board for Correction of Military Records for their
14 branch of military service. The process is authorized by 10 U.S.C. §§ 1552-53 and is substantially
15 similar for each branch of the Armed Forces. This process and the hurdles it presents are discussed
16 further below.

17 96. Alternately, the Secretaries “may correct any military record of the Secretary’s
18 department when the Secretary considers it necessary to correct an error or remove an injustice.” 10
19 U.S.C. § 1552(a)(1). “[S]uch corrections shall be made by the Secretary acting through” the Boards
20 for Correction of Military Records. *Id.* The Secretaries may act entirely independently, however, “in
21 the case of the correction of a military record announcing a decision that a person is not eligible to
22 enlist (or reenlist) . . . if the correction is favorable to the person concerned.” *Id.* at § 1552(a)(2).

23 97. The statute also provides the Secretaries of each Military Department with the ability
24 to independently “file a request for correction of a military record only if the request is made on behalf
25 of a group of members or former members of the armed forces who were similarly harmed by the
26 same error or injustice.” 10 U.S.C. § 1552(b).

27 98. Formal Department of Defense Instruction provides that “[t]he objective of a discharge
28 review is to examine the propriety and equity of the applicant’s discharge.” DODI 1332.28, Encl. 4,

1 ¶ E4.1 (2004). Discharges are deemed inequitable when “it is determined that the policies and
2 procedures under which the applicant was discharged differ in material respects from those currently
3 applicable on a Service-wide basis to discharges of the type under consideration[.]” *Id.* at E4.3.1. This
4 instruction properly anticipated that changing societal norms could turn previously accepted practices
5 into modern injustices.

6 99. The Government thus has provided mechanisms to address the discriminatory
7 discharge records issued under DADT and predecessor policies through widespread record corrections
8 initiated by the Secretaries, Boards for Correction of Military Records, and/or Discharge Review
9 Boards themselves, without placing additional burdens on the veterans harmed. Defendants have
10 failed to exercise that mechanism and correct these discriminatory discharge records on their own
11 initiative, instead requiring veterans to individually apply for records corrections.

12 100. The existing system for veterans to seek record corrections is plagued by significant
13 hurdles that uniquely burden veterans seeking corrections related to DADT and predecessor policies.
14 Veterans face (1) lengthy delays in the correction process and financial burdens; (2) evidentiary
15 burdens that must be carried by the individual applicant; (3) complicated and intimidating application
16 processes; and (4) stigma, isolation, and re-traumatization resulting from the individualized process.

17 101. ***Delays in the Correction Process and Financial Burdens.*** Before initiating the
18 correction process, veterans must obtain copies of relevant military personnel and/or medical records.
19 While veterans are issued a DD-214 upon discharge, many have misplaced it in the years after
20 discharge. This is particularly true for veterans who received discharges below Honorable and have
21 been unable to apply for benefits. Many veterans who were traumatized by their discharge process
22 and denied access to veterans’ benefits did not retain their discharge paperwork.

23 102. Veterans who need to obtain a new copy of their DD-214 and other relevant records
24 must file a request with a different agency, the National Personnel Records Center in St. Louis,
25 Missouri. The process takes months, if not years. The delay was further exacerbated by the COVID-
26 19 pandemic. During the pandemic, the Records Center operated at a significantly reduced capacity
27 and only processed emergency requests starting from the beginning of the pandemic until normal
28 operations resumed on March 7, 2022.

1 103. In addition, veterans who avail themselves of the record correction process must spend
2 countless hours preparing their application packages and may even need to hire legal counsel at their
3 own expense to help them navigate the onerous process. They are often met with a painfully slow
4 process that can extend from several months to several years.

5 104. Plaintiff Gonzales did not retain his DD-214s or other military discharge documents
6 after his discharge. Plaintiff Gonzales filed a request with the National Personnel Records Center on
7 August 5, 2022 and did not receive a copy of his military records until July 2023.

8 105. ***Veteran Bears Burden of Proof.*** Despite the Government’s own acknowledgment that
9 DADT and its predecessor policies were discriminatory and Secretary Stanley’s September 2011
10 memorandum stating that record correction and discharge upgrade requests “should normally [be]
11 grant[ed],” as the requesting party, veterans are obligated to prove that the military committed an error
12 or injustice warranting a record correction. They carry the burden of demonstrating that they deserve
13 to have their sexual orientation removed from their DD-214 and/or their discharge upgraded.

14 106. As a result, review boards encourage veterans to submit comprehensive applications,
15 including personal statements, statements from their military supervisors (who may have participated
16 in the discrimination), letters of support from colleagues and friends (to whom the applicant must
17 disclose the trauma of their discharge), private health records, evidence of good conduct both in the
18 military and in the civilian community, and any other evidence that supports their request. Veterans
19 are warned that the review boards will not obtain records or otherwise investigate their claims, even
20 though these boards have much greater access to relevant documents and witnesses.

21 107. ***Complex and Intimidating Application Processes.*** The online application processes
22 for record corrections and discharge upgrades are hopelessly complicated and intimidating. The
23 websites include out-of-date resources, broken and circular links, inscrutable acronyms, and complex
24 legal and military jargon. A veteran must determine which of many review boards to apply to and sort
25 through lengthy directions that are not specific to those seeking post-DADT record corrections or
26 discharge upgrades. Supporting documentation must meet exacting formatting standards.

27 108. To even access the application portal, a veteran is faced with a version of this warning
28 that they must accept before submitting an application:

1 The [U.S. Government] routinely intercepts and monitors communications on
 2 this [information system] for purposes including, but not limited to, penetration
 3 testing, COMSEC monitoring, network operations and defense, personnel
 4 misconduct (PM), law enforcement (LE), and counterintelligence (CI)
 5 investigations.

6 109. Veterans who experienced trauma and an invasion of privacy resulting in their
 7 discriminatory discharge must agree to monitoring and interception of their private information to fix
 8 their records.

9 110. *Stigma, Re-traumatization, and Isolation.* The record correction and discharge
 10 upgrade process fails to recognize that veterans who have been subject to discrimination are being
 11 asked to return to the very institution that discriminated against them and relive the humiliating and
 12 traumatic experience of their discharge while asking the institution to correct its own wrongs. Painful
 13 memories, feelings of shame, and traumatic discharge experiences create a barrier to accessing
 14 available remedies.

15 111. The Navy's discriminatory discharge, for example, led Plaintiff Gonzales to be
 16 ashamed of his sexual orientation in the years following his discharge and, consequently, discouraged
 17 him from undergoing the record correction process. For many years, Plaintiff Gonzales was unable to
 18 share his sexual orientation with his family members or discuss the details of his discharge with
 19 anyone. In fact, it took Plaintiff Gonzales twelve years after the repeal of DADT to even request his
 20 military records.

21 **V. CLASS ALLEGATIONS**

22 112. Plaintiffs Farrell, Gonzales, Powell, Sohn, and Steffanides bring this action pursuant to
 23 Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf
 24 of the following Sexual Orientation Indicator Class:

25 Veterans from all branches of the U.S. Armed Forces who have a DD-214
 26 stating a narrative reason for separation or a separation code that references
 27 sexual orientation as a reason for their discharge.

28 113. Plaintiffs Farrell, Gonzales, Powell, and Steffanides also bring this action pursuant to
 29 Rule 23(a) and (b)(2) on behalf of themselves and on behalf of the following Discharge Upgrade
 30 Subclass:

 Sexual Orientation Indicator Class members who did not receive an Honorable

1 discharge.

2 114. The members of the Sexual Orientation Indicator Class and the Discharge Upgrade
3 Subclass are so numerous that joinder of all members is impracticable. While the exact number of
4 Class members is unknown to Plaintiffs at this time, based on government documentation received
5 pursuant to a FOIA request, there are at least 35,801 veterans who fall within the proposed Sexual
6 Orientation Indicator Class and at least 29,177 veterans who fall within the Discharge Upgrade
7 Subclass.

8 115. This case presents numerous common questions of law and fact, including but not
9 limited to:

10 a. Whether the Defendants violated the Equal Protection Clause when they issued
11 Sexual Orientation Indicator Class members discharge paperwork that identified
12 their actual or perceived sexual orientation, while not identifying the actual or
13 perceived sexual orientation of other veterans;

14 b. Whether the Defendants' failure to remove indicators of sexual orientation from
15 discharge paperwork and issue Honorable discharges results in denial of benefits
16 to Discharge Upgrade Subclass members; and/or

17 c. Whether the Defendants' failure to remove indicators of sexual orientation from
18 discharge paperwork leads to the denial of liberty owed as a function of Sexual
19 Orientation Indicator Class members' service in the Armed Forces without due
20 process of law.

21 116. The members of the Sexual Orientation Indicator Class and Discharge Upgrade
22 Subclass are readily ascertainable and identifiable. They can be identified by reference to veterans'
23 DD-214s (or other discharge papers), which are in Defendants' possession.

24 117. Plaintiffs will fairly and adequately protect the interests of the Sexual Orientation
25 Indicator Class and Discharge Upgrade Subclass because Plaintiffs' claims are typical and
26 representative of all members of the Class and Subclass. Each Plaintiff was discharged because of
27 their sexual orientation. On information and belief, all of Plaintiffs' DD-214 forms contain an
28 indication of their sexual orientation. Plaintiffs Farrell, Gonzales, Powell, and Steffanides were also

1 denied Honorable discharges.

2 118. There are no unique defenses that may be asserted against Plaintiffs as distinguished
3 from their fellow class members, and the relief sought is common to all class members. Plaintiffs are
4 typical of the members of the Sexual Orientation Indicator Class and Discharge Upgrade Subclass,
5 and do not have interests that conflict with or are antagonistic to the interests of the Classes. Plaintiffs
6 intend to prosecute this action rigorously in order to secure remedies for the Sexual Orientation
7 Indicator Class and Discharge Upgrade Subclass.

8 119. Plaintiffs have retained competent counsel experienced in the relevant subject matters.
9 Counsel are experienced in relevant federal civil rights litigation and class actions.

10 120. Defendants have acted or refused to act on grounds that apply generally to the Sexual
11 Orientation Indicator Class, thereby making appropriate final declaratory and injunctive relief with
12 respect to the Class as a whole under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

13 121. Defendants have acted or refused to act on grounds that apply generally to the
14 Discharge Upgrade Subclass, thereby making appropriate final declaratory and injunctive relief with
15 respect to the Subclass as a whole under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

16 **VI. CLAIMS FOR RELIEF**

17 122. Because Defendants have failed to remedy the harms of their admittedly intentional
18 discrimination against the members of the Sexual Orientation Indicator Class and Discharge Upgrade
19 Subclass, the Government continues to violate the putative Class's equal protection and due process
20 rights under the Fourteenth and Fifth Amendments. The Sexual Orientation Indicator Class and
21 Discharge Upgrade Subclass seek declaratory and injunctive relief.

22 123. Declaratory judgment is proper, pursuant to 28 U.S.C. §§ 2201-02 and Rule 57 of the
23 Federal Rules of Civil Procedure, because an actual and immediate controversy exists between
24 Plaintiffs, the Sexual Orientation Indicator Class, and Discharge Upgrade Subclass, on the one hand,
25 and Defendants, on the other hand. The parties have genuine and opposing interests that are direct
26 and substantial. Defendants have violated the constitutional rights of the Plaintiffs and the putative
27 class members. Upon information and belief, Defendants deny these allegations. Declaratory relief
28 is therefore necessary and appropriate.

1 124. Further, Plaintiffs and the putative Sexual Orientation Indicator Class and Discharge
 2 Upgrade Subclass have no plain, adequate, or complete remedy at law. Defendants will continue to
 3 violate the constitutional rights of Plaintiffs and the putative Class and Subclass and will continue to
 4 inflict irreparable injury. This actual injury and threat of injury to Plaintiffs and the putative Class and
 5 Subclass from continuous and continuing violations requires permanent injunctive relief.

6 **FIRST CLAIM FOR RELIEF**

7 **(Violation of the Fourteenth and Fifth Amendments – Equal Protection)**

8 **Asserted by All Plaintiffs, the Sexual Orientation Indicator Class,**
 9 **and the Discharge Upgrade Subclass**

10 125. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs.

11 126. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution
 12 prohibits the states and state actors from discriminating against individuals based on sexual
 13 orientation. The Equal Protection Clause of the Fourteenth Amendment applies to the federal
 14 government through the Due Process Clause of the Fifth Amendment.

15 127. For the Sexual Orientation Indicator Class, the Government included information
 16 relating to sexual orientation, sexual conduct, and/or marriage in the veterans' DD-214s that it did not
 17 include in the discharge paperwork of other veterans. By treating the Sexual Orientation Indicator
 18 Class differently on the basis of sexual orientation, Defendants are engaging in impermissible
 19 discrimination based on sexual orientation in violation of the Equal Protection Clause.

20 128. As a direct and proximate result of the discrimination described above, Plaintiffs and
 21 the Sexual Orientation Indicator Class suffered, among other things, loss of privacy and stigmatization.
 22 Without injunctive relief from Defendants' inaction, Plaintiffs and the Sexual Orientation Indicator
 23 Class will continue to suffer irreparable harm in the future.

24 129. DADT and its predecessor policies intentionally discriminated against LGBTQ+
 25 service members by discharging them based on their actual or perceived sexual orientation. The
 26 known and unaddressed consequences of those policies also constitute intentional and continuing
 27 discrimination.

28 130. Plaintiffs and the Sexual Orientation Indicator Class continue to experience the lasting

1 and intentionally discriminatory consequences of DADT and its predecessor policies through the
2 indicators of sexual orientation on their DD-214.

3 131. That Defendants have left indicators of sexual orientation on the discharge paperwork
4 of thousands of LGBTQ+ veterans, when Defendants can correct this injustice, is a violation of the
5 Fifth Amendment's guarantee of equal protection.

6 **SECOND CLAIM FOR RELIEF**

7 **(Violation of the Fifth Amendment – Substantive Due Process, Privacy Interest)**

8 **Asserted by All Plaintiffs, the Sexual Orientation Indicator Class,**
9 **and the Discharge Upgrade Subclass**

10 132. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs.

11 133. The substantive component of the Fifth Amendment's Due Process Clause includes not
12 only the privileges and rights expressly enumerated by the Bill of Rights, but also includes the
13 fundamental rights implicit in the concept of ordered liberty. The Fifth Amendment bars certain
14 government actions regardless of the fairness of the procedures used to implement them, particularly
15 conduct that is so arbitrary as to constitute an abuse of governmental authority.

16 134. By requiring veterans discharged under DADT and predecessor policies to maintain
17 private information regarding sexual orientation, consensual sexual acts, and/or same-sex marriages
18 on their DD-214s, Defendants are continuously and deliberately depriving Plaintiffs and the Sexual
19 Orientation Indicator Class of their constitutional right to confidentiality, also known as an
20 informational privacy interest, in such a way that shocks the conscience or interferes with rights
21 implicit in the concept of ordered liberty.

22 135. There is no legitimate governmental interest in the ongoing disclosure of this personal
23 information, particularly after the Government halted the policies that triggered the disclosures after
24 its own recognition that the policies were discriminatory and violated the rights of active service
25 members.

26 136. As a direct and proximate result of the substantive due process violation described
27 above, Plaintiffs and the Sexual Orientation Indicator Class have suffered an invasion of privacy.
28 Without injunctive relief from Defendants' inaction, Plaintiffs and the Sexual Orientation Indicator

1 Class will continue to suffer irreparable harm in the future.

2 137. That Defendants have left indicators of sexual orientation on the discharge paperwork
3 of thousands of LGBTQ+ veterans, when Defendants can correct this injustice, is a violation of the
4 Fifth Amendment's protections of an informational privacy interest.

5 **THIRD CLAIM FOR RELIEF**

6 **(Violation of the Fifth Amendment – Substantive Due Process,**

7 **Liberty Interest in Veterans' Benefits)**

8 **Asserted by Plaintiffs Farrell, Gonzales, Powell, and Steffanides**

9 **and the Discharge Upgrade Subclass**

10 138. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs.

11 139. The substantive component of the Fifth Amendment's Due Process Clause includes not
12 only the privileges and rights expressly enumerated by the Bill of Rights, but also includes the
13 fundamental rights implicit in the concept of ordered liberty. The Fifth Amendment bars certain
14 government actions regardless of the fairness of the procedures used to implement them, particularly
15 conduct that is so arbitrary as to constitute an abuse of governmental authority.

16 140. By requiring veterans discharged under DADT and predecessor policies to maintain
17 discriminatorily reduced discharge statuses, Defendants are continuously and deliberately depriving
18 Plaintiffs Farrell, Gonzales, Powell, and Steffanides and the Discharge Upgrade Subclass of veterans'
19 benefits, a legitimate property interest protected by the Fifth Amendment, in such a way that shocks
20 the conscience or interferes with rights implicit in the concept of ordered liberty.

21 141. Plaintiffs Farrell, Gonzales, Powell, and Steffanides and the Discharge Upgrade
22 Subclass were issued discharge statuses below Honorable because of their perceived or actual
23 LGBTQ+ status, depriving them of veterans' benefits that are conditioned on an Honorable discharge.
24 There is no legitimate governmental interest in the ongoing deprivation of veterans' benefits,
25 particularly after the Government halted the policies that triggered the reduced discharge statuses after
26 its own recognition that the policies were discriminatory and violated the rights of service members.

27 142. That Defendants have left thousands of LGBTQ+ veterans with discriminatorily
28 reduced discharge statuses, when Defendants can correct this injustice, is an ongoing violation of the

1 Fifth Amendment’s guarantee of substantive due process.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Violation of the Fifth Amendment – Procedural Due Process)**

4 **Asserted by All Plaintiffs, the Sexual Orientation Indicator Class,**

5 **and the Discharge Upgrade Subclass**

6 143. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs.

7 144. The Due Process Clause of the Fifth Amendment to the U.S. Constitution requires the
8 Government to provide notice and an opportunity to be heard before deprivation of a liberty or property
9 interest.

10 145. By requiring veterans discharged under DADT and predecessor policies to identify
11 their actual or perceived sexual orientation on their DD-214s, Defendants are continuously and
12 deliberately depriving Plaintiffs and the Sexual Orientation Indicator Class of their liberty interest in
13 confidentiality and informational privacy.

14 146. By requiring veterans discharged under DADT and predecessor policies to maintain
15 discriminatorily reduced discharge statuses, Defendants are continuously and deliberately depriving
16 Plaintiffs Farrell, Gonzales, Powell, and Steffanides and the Discharge Upgrade Subclass of their
17 property interest in veterans’ benefits.

18 147. The sole avenue for relief from the lasting consequences of DADT and its predecessor
19 policies is for individual veterans to apply for record corrections and discharge upgrades from their
20 respective Discharge Review Boards.

21 148. The individualized record correction and discharge upgrade process is constitutionally
22 inadequate. The process places the burden on individual veterans to spend months or years obtaining
23 old personnel records before they can even file the applications that will then take months or years to
24 be processed, on top of the years since their discriminatory discharges. The application process is
25 opaque; many veterans must hire lawyers to assist them. Individual veterans are forced to relive the
26 trauma of their discharge, carrying the burden of proving discrimination to the very institution that
27 discriminated against them. Through the entire process, Plaintiffs, the Sexual Orientation Indicator
28 Class, and the Discharge Upgrade Subclass are continuously deprived of their Fifth Amendment

1 protected privacy and liberty interests.

2 149. The individualized record correction and discharge upgrade process demands that
3 victims of discrimination jump through bureaucratic hoops that would not be necessary had they not
4 been victims of government-sanctioned discrimination.

5 150. Defendants' failure to implement a constitutionally compliant process to address the
6 consequences of DADT and its predecessor policies continues to deprive Plaintiffs, the Sexual
7 Orientation Indicator Class, and the Discharge Upgrade Subclass of their Fifth Amendment protected
8 interests and violates the Fifth Amendment's guarantee of procedural due process.

9 **VII. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for the following relief:

11 a. A judicial declaration, pursuant to 28 U.S.C. §§ 2201-02 and Rule 57 of the Federal
12 Rules of Civil Procedure that:

13 i. Defendants' failure to systematically remove indicators of sexual orientation
14 from veterans' discharge papers upon the repeal of DADT violates the Fourteenth and Fifth
15 Amendment's guarantees of equal protection and substantive due process;

16 ii. Defendants' record correction and discharge upgrade process violates the Fifth
17 Amendment's guarantee of procedural due process; and

18 iii. Defendants' failure to systematically upgrade the discharge characterizations of
19 veterans receiving a less than Honorable characterization as a result of a discharge based on
20 their actual or perceived sexual orientation violates the Fourteenth and Fifth Amendment's
21 guarantees of equal protection, substantive due process, and procedural due process.

22 b. A permanent injunction against Defendants:

23 i. Requiring Defendants to conduct a comprehensive review of every discharge
24 processed pursuant to DADT and its predecessor policies and systematically remove all
25 indicators of sexual orientation—including (1) narrative reasons for separation, and
26 (2) affiliated separation codes from veterans' DD-214s—and to provide, or make easily
27 available, to each veteran a corrected copy of his, her, or their DD-214;

28 ii. Requiring Defendants to systematically upgrade discharge characterizations to

1 Honorable in accordance with the above changes to DD-214s and notify all relevant federal
2 agencies of the upgrade;

3 iii. Requiring Defendants to systematically change reenlistment/reentry codes in
4 accordance with the above changes to DD-214s; and

5 iv. Retaining jurisdiction over Defendants until such time as the Court is satisfied
6 that the unlawful customs, policies, practices, rules, regulations, acts, and omissions
7 complained of herein no longer exist and will not recur.

8 c. An award of reasonable attorneys’ fees and costs incurred as a result of bringing this
9 action, pursuant to 28 U.S.C. § 2412(d) and other applicable laws; and

10 d. Any other and further form of relief as the Court deems just and proper.

11
12 Dated: October 26, 2023

By: /s/ Jocelyn Larkin
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