

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
MINORITY (202) 225-5074  
<http://oversight.house.gov>

June 15, 2020

The Honorable Mark T. Esper  
Secretary  
Department of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301

The Honorable Ryan D. McCarthy  
Secretary of the Army  
Department of Defense  
101 Army Pentagon  
Washington, D.C. 20310

The Honorable Kenneth J. Braithwaite  
Secretary of the Navy  
Department of Defense  
1000 Navy Pentagon  
Washington, D.C. 20350

The Honorable Barbara M. Barrett  
Secretary of the Air Force  
Department of Defense  
1670 Air Force Pentagon  
Washington, D.C. 20330

Dear Secretaries Esper, McCarthy, Braithwaite, and Barrett:

We are writing to request information about how the Department of Defense (DOD) and the military services are working to address underlying racial and ethnic disparities within the United States military justice system. The United States military projects strength around the world, not only through firepower, but by uniting citizen-soldiers from a diverse array of racial, economic, and cultural backgrounds to defend the nation. We believe those values must also be reflected through equitable enforcement of the Uniform Code of Military Justice.

Unfortunately, like other aspects of American society, DOD and the armed services continue to struggle with systemic issues of racism and inequality, especially with respect to how minority servicemembers are treated in the military justice system. For example, in May 2019, the Government Accountability Office (GAO) reported that African American servicemembers are between 1.6 and 2.1 times more likely to be the subjects of recorded investigations across the Army, Navy, Marine Corps, and the Air Force. GAO reported similar findings for the likelihood that African American servicemembers would be tried in general and special courts-martial.<sup>1</sup>

GAO also found that DOD and the armed forces did not gather complete demographic data on servicemembers in the military justice system. While GAO noted that DOD has implemented some steps to study racial disparities, it “has not comprehensively evaluated the

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<sup>1</sup> Government Accountability Office, *DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities* (May 2019) (online at [www.gao.gov/assets/700/699380.pdf](http://www.gao.gov/assets/700/699380.pdf)).

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causes” of these disparities in the military justice system. As a result, DOD may not be fully aware of certain racial and ethnic disparities within its ranks and is unable to address them.<sup>2</sup>

The National Defense Authorization Act for Fiscal Year 2020 (NDAA) directed the Secretary of Defense to require each service branch to record demographic information about victims and the accused for each court-martial action, and to include this information in the service’s annual military justice report. The legislation also required the Secretary of Defense to establish criteria to determine whether certain racial disparities may exist in the military justice system, and it also required the Secretary to “conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities identified in the military justice system” and “take steps to address the causes of any such disparities, as appropriate.”<sup>3</sup> Our beloved former Chairman Elijah Cummings—a great champion of civil rights and equal justice—advocated for the inclusion of these provisions in an amendment to the NDAA.<sup>4</sup>

We are grateful that leaders throughout DOD are already having conversations about racial inequality in America and within the military ranks:

- On June 1, 2020, Air Force Chief Master Sergeant Kaleth O. Wright addressed his anger and fears about recent events and committed to “a full and thorough independent review of our military justice system.”<sup>5</sup> Later, Air Force Chief of Staff General David Goldfein acknowledged that the Air Force is “not immune to the spectrum of racial prejudice, systemic discrimination, and unconscious bias.” He also confirmed that the Air Force has requested an Inspector General review of the Air Force’s legal system.<sup>6</sup>
- Army leadership, including Secretary McCarthy, wrote: “Our ability to defend this country from all enemies, foreign and domestic, is founded upon a sacred trust with the American people. Racial division erodes that trust.”<sup>7</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Pub. L. No. 116-92.

<sup>4</sup> Elijah E. Cummings, *Twitter* (July 12, 2019) (online at <https://twitter.com/RepCummings/status/1149788683387768836>).

<sup>5</sup> Kaleth O. Wright, *Twitter* (June 1, 2020) (online at <https://twitter.com/cmsaf18/status/1267572373299048465>).

<sup>6</sup> *Goldfein: ‘Every American Should be Outraged’ at Police Conduct in Death of George Floyd*, *Military Times* (June 2, 2020) (online at [www.militarytimes.com/news/your-air-force/2020/06/02/goldfein-every-american-should-be-outraged-at-police-conduct-in-death-of-george-floyd/](http://www.militarytimes.com/news/your-air-force/2020/06/02/goldfein-every-american-should-be-outraged-at-police-conduct-in-death-of-george-floyd/)).

<sup>7</sup> Department of the Army, *A Message to the Army Community About Civil Unrest* (June 3, 2020) (online at [www.army.mil/article/236157/a\\_message\\_to\\_the\\_army\\_community\\_about\\_civil\\_unrest](http://www.army.mil/article/236157/a_message_to_the_army_community_about_civil_unrest)).

- Chief of Naval Operations Admiral Mike Gilday said in a video message: “[W]e can’t be under any illusions about the fact that racism is alive and well in our country. And I can’t be under any illusions that we don’t have it in our Navy.”<sup>8</sup>
- Commandant of the Marine Corps Gen. David Berger stated: “Only as a unified force, free from discrimination, racial inequality, and prejudice can we fully demonstrate our core values, and serve as the elite warfighting organization America requires and expects us to be.”<sup>9</sup>

Addressing racial disparities within the military justice system will require serious dialogue, concrete action, and sustained commitment across the military services, particularly among its top leaders. For these reasons, we request that you provide answers to the following questions by June 26, 2020:

1. Have DOD and the armed services begun collecting demographic data regarding victims and the accused for courts-martial actions pursuant to the NDAA? Where is each military service in the process of complying with the associated provision of the NDAA?
2. When do DOD and each service expect to publish its annual military justice report that includes demographic data pursuant to the NDAA? Will those annual reports be publicly available?
3. Has the Secretary of Defense established criteria to determine when collected data on military justice actions indicates a potential disparity in the military justice system? If so, what are those criteria?
4. Have the Secretary of Defense or the military services conducted an evaluation to identify the causes of any racial, ethnic, or gender disparities identified in the military justice system? If so, what were the results of that evaluation? If not, when does the Department expect such an evaluation to be complete?
5. Do DOD or the military services plan to issue public versions of internal reports produced regarding military justice, courts-martial decisions, and nonjudicial punishments? If DOD does not plan to issue public versions of these reports, what is the reason?

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<sup>8</sup> Department of the Navy, *CNO Message to Sailors* (June 3, 2020) (online at [www.navy.mil/submit/display.asp?story\\_id=113160](http://www.navy.mil/submit/display.asp?story_id=113160)).

<sup>9</sup> U.S. Marine Corps, *Message from the Commandant of the Marine Corps and The Sergeant Major of the Marine Corps* (June 3, 2020) (online at [www.marines.mil/News/Press-Releases/Press-Release-Display/Article/2207572/message-from-the-commandant-of-the-marine-corps-and-the-sergeant-major-of-the-m/](http://www.marines.mil/News/Press-Releases/Press-Release-Display/Article/2207572/message-from-the-commandant-of-the-marine-corps-and-the-sergeant-major-of-the-m/)).

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6. Please provide an update on how DOD and the military services are working to implement and close the 11 recommendations in GAO's May 2019 report.

We also request that you provide by June 26, 2020, the following documents for the time period from January 1, 2017, to the present:

1. All reports or evaluations produced by DOD or the military services regarding military justice actions;
2. All documents and communications regarding DOD or military service reviews and assessments of racial and ethnic disparities within the military justice system;
3. All climate surveys or other evaluations conducted by DOD or the military services to evaluate servicemember perceptions of bias or racial and ethnic disparities within the military justice system;
4. All documents from DOD's Office of Diversity, Equity, and Inclusion reviewing the military justice system and related racial disparities; and
5. All racial, ethnic, and gender demographic data regarding military justice system actions, including investigations, trials, and convictions since January 1, 2017.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

An attachment to this letter provides additional instructions for responding to the Committee's request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Stephen F. Lynch  
Chairman  
Subcommittee on National Security



Jamie Raskin  
Chairman  
Subcommittee on Civil Rights  
and Civil Liberties

Enclosure

The Honorable Mark T. Esper  
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cc: The Honorable Glenn Grothman, Ranking Member  
Subcommittee on National Security

The Honorable Chip Roy, Ranking Member  
Subcommittee on Civil Rights and Civil Liberties

## Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and TIF file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.