

FILED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

2023 AUG 18 A 8:41

NICHOLAS HARRISON, et al.,  
Plaintiffs,  
v.  
LLOYD J. AUSTIN, Secretary of Defense,  
et al.,  
Defendants.

Civil Action No. 1:18-cv-641  
(LMB/IDD)

**MOTION TO SHOW CAUSE**

**COMES NOW**, Plaintiff, Nicholas Harrison, to move for an Order to Show Cause against the Defendants, and in support thereof alleges and states as follows:

1. The Defendants supposedly appointed the Plaintiff as a First Lieutenant on May 25, 2023. At the last hearing, they stated that the Plaintiff was scheduled for the first available Judge Advocate Officer Basic Course (JAOBC) and that the Plaintiff would be eligible to apply for promotion to Captain after completing that course.
2. However, although the Defendants claim adherence to the court's order and acknowledgment of the Plaintiff's commission, these declarations are not mirrored in their records, systems, or actions:
  - a. *Military ID Card*: Despite the Plaintiff's efforts to obtain a new military ID card, the Plaintiff was consistently informed that he did not appear in the system. This obstacle was only overcome on

August 8, 2023 – almost three months after the Plaintiff's appointment.

- b. *System Access:* As a consequence of the above, the Plaintiff has been unable to access any military systems for the past three months, severely limiting the Plaintiff's operational capabilities.
- c. *Account Transition Issues:* Following the Plaintiff's transition from the enlisted to the officer side, all the Plaintiff's military profiles and accounts seem to have disappeared, with no indication of any effort to restore or recreate them.
- d. *Military E-Mail Account:* As of this moment, the Plaintiff still lacks a military e-mail account. This prevents the Plaintiff from receiving most official military communications, including details of and updates about the courses the Plaintiff is supposed to attend.
- e. *Lack of Training Orders:* The Plaintiff has not received any formal orders to attend the aforementioned training courses.
- f. *Travel Complications:* Without a government travel card or access to the defense travel system, and with no assistance provided to the Plaintiff, the Plaintiff has been unable to secure any travel arrangements.
- g. *Dependent Documentation:* The Plaintiff's partner, whom the Plaintiff wishes to enroll as a dependent, remains unlisted in all records. Consequently, obtaining a military identification card for him has proven impossible.

- h. *Court Injunction:* The court's injunction has not been incorporated into iPerms, the servicemember's electronic military personnel file, causing further complications.
3. These circumstances caused the Plaintiff to miss the report time for the first phase of the scheduled training at Fort Moore, GA for the Plaintiff's role in the JAG Corps.
  4. As this phase would have been immediately followed by another phase of training at Charlottesville, VA, it is unclear that the Plaintiff can be enrolled in another set of courses in time to complete the 125-day training requirements before May 25, 2024.
  5. Pursuant to AR 27-1, Paragraph 7-9, the Plaintiff is required to complete both phases of training within 12 months of the Plaintiff's appointment and assignment to the JAG Corps. Failure to do so may result in the termination of the Plaintiff's assignment to the JAG Corps and termination of federal recognition of the Plaintiff's appointment.
  6. At the hearing on July 14, 2023, the Court noted:  
*"You know, it's interesting. Transcripts don't adequately represent what goes on in a courtroom, and I respect the fact that I think you're having some difficulty in your position. There's a great deal of hesitation."*  
*"Good lawyers think carefully and slowly before they answer, but the fact that I sense that you're struggling to some degree with your responses suggests to me that out of an abundance of caution, I need to put that injunction in place that protects the lieutenant, given the fact that there is,*

*in my view, some unfortunate aroma of unwillingness to be in complete aggressive compliance with the Court's order.”*

7. Thus, the military's failure to ensure that the Plaintiff's appointment is reflected in its records, systems, or actions is troubling. Not only does it cause further injury to the Plaintiff by delaying the Plaintiff's opportunity to apply for a promotion, but it also appears to be a way to circumvent the Court's order and rescind its appointment.
8. Indeed, the Defendants' current legal posture also suggests that the military does not feel like it is bound to follow the Court's order:
  - a. When the Administration did not appeal, the Defendants did not acknowledge and accept wrongdoing, but instead reframed the policy shift as something they were planning to do anyway.
  - b. The Defendants did not reconsider the Plaintiff's application as directed by the Court. Instead, they had the Plaintiff update the application and then reframed it as the Plaintiff simply submitting a new application under the new policy.
  - c. The Defendants continue to require HIV+ servicemembers seeking a commission to submit a request for a waiver even though HIV, in and of itself, is no longer supposed to be a disqualifying medical condition – asserting the discretion and authority to discriminate.
  - d. The Defendants also continue to require HIV+ servicemembers who wish to deploy with their units to submit an exception to a policy that was supposedly struck down by the Court.

**WHEREFORE**, the Plaintiff respectfully requests that the Court require the named Defendants to appear in person to show cause as to why they should not be held in contempt.

Respectfully Submitted.

*Nicholas A. Harrison*

**Nicholas A. Harrison**

Plaintiff (DC Bar #1024439)

Harrison-Stein, PC

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Web: <https://harrison-stein.com/>

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria DIVISION

Nicholas Harrison, et. al.  
Plaintiff(s),

v.

Civil Action Number: 1:18-cv-641  
(LMB/IDD)

Lloyd Austin, et. al.  
Defendant(s).

LOCAL RULE 83.1(M) CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of Motion to Show Cause  
(Title of Document)

Nicholas Harrison  
Name of Pro Se Party (Print or Type)

Nicholas Harrison  
Signature of Pro Se Party

Executed on: 18 Aug 2023 (Date)

OR

The following attorney(s) prepared or assisted me in preparation of \_\_\_\_\_  
(Title of Document)

\_\_\_\_\_  
(Name of Attorney)

\_\_\_\_\_  
(Address of Attorney)

\_\_\_\_\_  
(Telephone Number of Attorney)  
Prepared, or assisted in the preparation of, this document

\_\_\_\_\_  
(Name of Pro Se Party (Print or Type)

\_\_\_\_\_  
Signature of Pro Se Party

Executed on: \_\_\_\_\_ (Date)

# Exhibit 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

NICHOLAS HARRISON, et al.,

Plaintiffs,

v.

LLOYD J. AUSTIN, Secretary of Defense, et al.,

Defendants.

Civil Action No. 1:18-cv-641 (LMB/IDD)

**DECLARATION OF NICHOLAS HARRISON**

1. My name is Nicholas Harrison, one of the plaintiffs in Harrison v. Austin. I am over eighteen years of age, I am competent to testify about the information contained in this declaration and I offer this declaration based on my own actual, personal knowledge.
2. At the last hearing on July 14, 2023, Counsel for the Defendants represented to the Court that I had received a commission as a First Lieutenant, that I had been enrolled in the first available Judge Advocate Officer Basic Course (JAOBC), and that I would be eligible to apply for promotion to Captain after completing that course - asserting that said actions showed adherence to and compliance with the Court's order.
3. SFC Booty had made me aware that there had been some problems switching over my Integrated Personnel and Pay System Account (IPPS-A) to reflect my transition from the enlisted to the officer side on June 27, 2023. (See Exhibit 2.) However, he had assured me that those issues had been resolved and that I could come into the armory at any time to get a new Common Access Card (CAC) military identification. Thus, I did not raise that issue or dispute the Defendants' representations.

4. Over the next month, I came into the armory on several occasions to try to secure a CAC. I was told that my information had not been updated in the Defense Enrollment Eligibility Reporting System (DEERS) yet and, consequently, they could not create a CAC for me. They promised to create a trouble ticket and escalate the ticket to the National Guard Bureau (NGB) for resolution. Then, they said they would call me when the issue was resolved.
5. No one ever called me. Thus, I came into the building on several occasions to check on the situation - experiencing problems getting past building security, who insisted that I needed a CAC or an appointment in order to enter the building. I was told that another trouble ticket was created and escalated. However, once again, no one ever called me. The issue was not resolved until August 8, 2023.
6. A CAC is required to access all military facilities and systems. Thus, even though I had supposedly been appointed as an officer on May 25, 2023, I was not able to access any military systems during that time. When I finally did receive a CAC and I could try logging in, I found that all of my military accounts and profiles had been deleted and there was no indication of any effort to restore or recreate them.
7. I informed my chain of command of these difficulties - highlighting the fact that I did not have access to the Defense Travel System (DTS) and that I had not been issued a Government Travel Card (GTC) and that, consequently, I was unable to make any travel arrangements. I requested that I be placed on official orders to attend training and that someone in the United States Property and Fiscal Office (USPFO) make the necessary travel arrangements using a Centrally Billed Account (CBA). However, none of that happened.
8. As the report date for the first phase of my scheduled training approached, I escalated the issue - speaking to the First Sergeant and Commander in Joint Force Headquarters, the Commander in the Legal Services Office, the Commander in the Office of the Staff Judge

Advocate, and the Inspector General of the DC National Guard. I even came into the armory to see the senior non-commissioned officer in the Joint Operations Center - who tried unsuccessfully to reach out to other personnel in various offices to resolve the issues.

9. On August 13, 2023, I still had not received any official orders or travel arrangements. So, I reached out to the instructor cadre at the Direct Commissioning Course (DCC) - the first phase of the training that I was scheduled to attend. I informed them that I was alive and well, but that my arrival had been delayed and I had not yet been informed by my chain of command of their plan of action. I was told that they could not bring me into the course at a later date. Instead, I would have to enroll in another course and the next available course was October 9, 2023.
10. I advised my chain of command of this information and of the possible implications of such a delay. The first phase of training at Fort Monroe, GA was followed by a second phase of training at the University of Virginia in Charlottesville VA. That training was a block of classroom instruction that seemed to coincide with the regular campus academic semester. Thus, if the delay in attending the DCC also caused me to lose that reservation, it was unlikely that second phase could be rescheduled until sometime next year.
11. Pursuant to AR 27-1, Paragraph 7-9, my appointment as a commissioned officer and my assignment to the JAG Corps is considered to be conditional. I am required to complete both phases of this training within twelve months of my appointment. Thus, if I do not complete both phases by May 25, 2024, my appointment as a commissioned officer and my assignment to the JAG Corps may be terminated. (See Exhibit 3.)
12. Moreover, at the last hearing, the Defendants made it clear that their position was that I am not eligible for promotion to Captain until I have completed that training. So, the delay

causes an additional injury to me - on top of the injury that I have suffered from the military's unconstitutional discriminatory HIV policies over the past ten years.

13. After the Defendants caused me to miss the first phase of training, I reached out to the opposing counsel and to the chain of command in an effort to resolve the issues - suggesting that a waiver for the DCC requirement might be an option to keep the second course reservation and still fulfill the timeline that the Defendants represented to the Court at the last hearing.
14. However, the opposing counsel responded by characterizing the situation as my fault. (See Exhibit 4.) There seemed to be no interest in resolving the matter. My chain of command noted that they would process and route a waiver request if I submitted one, but the only grounds for a waiver was extreme personal or professional hardship and that I should temper my expectations. (See Exhibit 5.)
15. At the last hearing, the Court noted the hesitancy of the opposing counsel when asked for a simple assurance that the Defendants would not initiate involuntary separation proceedings (barring something like a conviction for shoplifting) over the course of the next three years - causing it to impose a protective injunction against "instituting any Selective Retention Board or other proceeding to separate Lieutenant Harrison involuntarily from military service."
16. Given the opposing counsels' arguments that the word "that" in the Court's previous order shouldn't be interpreted in accordance with either, the plain meaning or the contextual reading rules, I am concerned that the Defendants might try to argue that the termination of my appointment as a commissioned officer and my assignment to the JAG Corps pursuant to AR 27-1, Paragraph 7-9 doesn't qualify as an "other proceeding" within the meaning of the Court's injunction.

17. Those concerns are aggravated by the Defendants' apparent refusal to consider a waiver as an option to keep the second course reservation and still fulfill the timeline that was represented to the Court at the last hearing.
18. Moreover, I should also note that I submitted paperwork for incorporation into iPerms, my electronic military personnel file, on July 21, 2023 and that request has still not been acted upon. This is also concerning because included in that paperwork was a copy of the Court's recent protective injunction. (See Exhibit 6.)

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on August 17, 2023.

Respectfully Submitted.

*Nicholas A. Harrison*

**Nicholas A. Harrison**  
Plaintiff (DC Bar #1024439)  
Harrison-Stein, PC  
601 Pennsylvania Avenue NW  
South Building, Suite 900  
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Web: <https://harrison-stein.com/>

# Exhibit 2

## 1LT Harrison, Nicholas - Officially a 1LT in the DCARNG

Booty, Jason D SFC USARMY NG DCARNG (USA) <jason.d.booty.mil@army.mil>

Tue 6/27/2023 8:18 AM

To:Nicholas Harrison <alaskaairborne@yahoo.com>;Nick Harrison <nick@harrison-stein.com>

Cc:Johnson, Annette R CW3 USARMY NG DCARNG (USA) <annette.r.johnson.mil@army.mil>;Strickland, Lejuan Terrell MAJ USARMY NG DCARNG (USA) <lejuan.t.strickland.mil@army.mil>;Cochran, Latanya SFC USARMY NG DCARNG (USA) <latanya.cochran.mil@army.mil>;Washington, Terrence O SFC USARMY NG DCARNG (USA) <terrence.o.washington.mil@army.mil>;GRANDPIERRE, PAUL LTC USARMY NG DCARNG (USA) <paul.grandpierre.mil@army.mil>;Goodin, Robert John COL USARMY NG DCARNG (USA) <robert.j.goodin.mil@army.mil>

1LT Harrison,

Officially, welcome to the District of Columbia Army National Guard as an Officer. For your situational awareness, your IPPSA account was having problems with the change over from Enlisted to Officer but as of yesterday it has been resolved. By this Thursday, you can get a new ID card. Below are some important contacts for your new unit, please contact SFC Cochran to get information for your upcoming drill schedule. If you have any questions, please feel free to reach out.

MAJ Strickland – Commander - [lejuan.t.strickland.mil@army.mil](mailto:lejuan.t.strickland.mil@army.mil)

SFC Cochran – BN S1 - [latanya.cochran.mil@army.mil](mailto:latanya.cochran.mil@army.mil) - 202-685-9990

SFC Washington – Training NCO - [terrence.o.washington.mil@army.mil](mailto:terrence.o.washington.mil@army.mil) - 202-685-8726

V/r

**Jason D Booty**  
SFC, DCARNG

### **District of Columbia Officer/Warrant Strength Manager NCOIC**

Officer/Warrant IST Coordinator  
Specialty Branch Officer Recruiter  
Recruiting and Retention Battalion S-1  
Recruiting and Retention Battalion Security Manager

### **Recruiting & Retention Battalion**

District of Columbia Army National Guard  
2001 East Capitol Street SE  
Washington, DC 20003

 Office: (202) 685-9930

 Mobile: (202) 536-9829

Email: [Jason.d.booty.mil@army.mil](mailto:Jason.d.booty.mil@army.mil)

MS Teams Chat: <https://teams.microsoft.com/l/chat/0/0?users=jason.d.booty.mil@army.mil>

-  
For general inquiries please use the Officer Strength Manager group email:  
[ng.dc.dcarng.list.ngdc-j1-rrf-rrf-only-osf-pocs@army.mil](mailto:ng.dc.dcarng.list.ngdc-j1-rrf-rrf-only-osf-pocs@army.mil)

GKO Specialty Branch:

<https://gko.portal.ng.mil/arng/G1/D05/AccessionsBranch/SpecialtyBranch/SitePages/Home.aspx>

When you join the District of Columbia Army National Guard, you're joining a team with purpose and setting yourself up for a successful future. You'll gain job skills and leadership experience, and get a head start on your civilian career. Explore the many ways Guard service can accelerate your path.

# Exhibit 3

(1) The SJA, USARC, is responsible for technical-channel legal supervision over subordinate embedded JAGC sections, including directing, monitoring, and supervising USAR legal training.

(2) The SJA, USARC prepares USARC command legal training policy guidance; exercises responsibility for training readiness; develops, in coordination with the Commander, USARLC; the SJA, U.S. Army Forces Command (FORSCOM); the SJA, First U.S. Army (FUSA) and the SJA, U.S. Army Special Operations Command (USASOC) (for Special Operations Forces (SOF)), training strategy, including defining the mission, goals and intent of USAR legal training; and allocates training resources to execute the strategy.

(3) The SJA, USARC will monitor overseas deployment training (ODT) for JAGC sections of other non-SOF troop program units (TPUs) in accordance with AR 350–9.

(4) The SJA, FORSCOM is responsible for overseeing the technical-channel legal supervision provided by the SJA, USARC.

(5) The SJA, USASOC is responsible for technical-channel legal supervision over RC JAGC personnel assigned or attached to subordinate SOF units and for technical-channel legal supervision over USASOC RC JAGC personnel, including the direction, monitoring and supervision of RC SOF JAGC legal training. (SOF units include any unit performing a special operations activity as defined in 10 USC 167(j), or which is under the mission command of USASOC.)

(6) The SJA, FUSA shall coordinate with the SJA, USARC, on non-active duty training of RC JAGC assets to ensure uniformity of training and availability of common RC JAGC skills throughout the entire RC JAGC.

(7) The SJA, FORSCOM shall provide technical-channel legal supervision for ARNGUS JAGC units and personnel, and for directing, monitoring and supervising RC JAGC training in ARNGUS JAGC units and personnel.

(8) The Chief, ARNG TDS, in coordination with the Chief, USATDS, is responsible for exercising technical supervision, including evaluations, management and direction over ARNG TDS personnel while in Title 32 (non-federal) status consistent with professional responsibility and state ethics requirements.

*c. Mission command and technical supervision of USARLC units and organic RC personnel when mobilized.*

(1) The Commander, FUSA, commands and controls mobilized USAR units until such units are assigned, attached to, or placed under the operational control of another unit.

(2) The SJA, FUSA, is responsible for technical-channel legal supervision over RC JAGC sections of mobilized subordinate units, including directing, monitoring and supervising legal training, until such mobilized units are assigned, attached to, or placed under the operational control of another unit.

(3) The SJA, FORSCOM is responsible for overseeing the technical-channel legal supervision provided by the SJA, FUSA.

### Section III

#### Educational Requirements

#### 7–8. Educational requirements for newly appointed Reserve Component officers assigned to the Judge Advocate General's Corps

*a. Rank.* Except for USAR officers granted conditional assignment to the JAGC and ARNGUS officers granted conditional JAGC branch educational qualification for federal recognition as described in paragraph 7–9:

(1) Appointment to the rank of first lieutenant or captain requires credit for the Judge Advocate Officer Basic Course (OBC) and Direct Commission Course (DCC).

(2) Appointment to the rank of major or above requires credit for the Judge Advocate Officer Graduate Course or the Judge Advocate Officer Advanced Course.

*b. Assignment to JA positions.* Except for officers granted conditional assignment or conditional JAGC branch educational qualification for federal recognition as described in paragraph 7–9, or otherwise approved for assignment to a JA position by TJAG, RC JA officers must be educationally qualified before assignment to a JA position.

*c. Responsibilities of commanders.*

(1) Commanders of TPUs will not assign non-JA officers to JA positions and will remove from JA positions any non-JA officers who are found to have been so assigned.

(2) A RC officer assigned to a JA position will be reassigned to a non-JA position if they are not educationally qualified for the position, or if the officer received a conditional appointment or conditional federal recognition under paragraph 7–9 and they are not making satisfactory progress in a course of instruction leading to such qualification as determined by the Chief, PPTO, in coordination with the Dean, TJAGLCS.

### **7–9. Conditional assignment or conditional Judge Advocate General’s Corps educational branch qualification for Federal recognition**

*a. USAR officers.* USAR officers who are otherwise qualified, but who have not completed the educational requirements specified in paragraph 7–8, may receive conditional assignment to the JAGC. To do so, such officers must complete the following educational requirements:

(1) Officers in the grade of first lieutenant or captain must complete the JAOBC (OBC and DCC) within 12 months of the date of conditional assignment.

(2) Captains within 42 months of their promotion eligibility date must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the conditional assignment or completion of the JAOBC, whichever is later.

(3) Officers in the grade of major or above must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the date of the conditional appointment or completion of the JAOBC, whichever is later.

*b. ARNG officers.* Pursuant to AR 135–100, ARNG officers who apply for federal recognition and associated appointment as Reserves for service as members of the ARNGUS (see 10 USC 12211) and are otherwise qualified, but have not completed the educational requirements specified in paragraph 7–8, may receive conditional JAGC educational branch qualification for the purpose of federal recognition and assignment to the JAGC. In order to qualify, such officers must complete the following educational qualifications:

(1) Officers in the grade of first lieutenant or captain must complete the JAOBC (OBC and DCC) within 12 months of the date of conditional assignment.

(2) Captains within 42 months of their promotion eligibility date must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the conditional assignment or completion of the JAOBC, whichever is later.

(3) Officers in the grade of major or above must complete the JAOAC or the Judge Advocate Graduate Course within 24 months of the date of the conditional appointment or completion of the JAOBC, whichever is later.

*c. Completion requirements.* Failure to complete educational requirements in the time specified may result in termination of the officer’s assignment and termination of federal recognition.

### **7–10. Educational requirements for promotion**

For USAR promotion or federal recognition of ARNG state promotion, JA officers must meet the educational requirements for promotion to the next higher grade as stated. USAR officers conditionally assigned to the JAGC with a military education stipulation under paragraph 7–9 will be educationally qualified for promotion to grades below lieutenant colonel if they are progressing satisfactorily (as determined by TJAG or TJAG’s designee) toward completion of required military education at the date the promotion or federal recognition board convenes. Progressing satisfactorily for purposes of this regulation means completion of all course work for JAOBC (for promotion to captain (CPT)) and JAOAC (for promotion to major), but still pending graduation from the residence phase.

## **Section IV**

### **Administration and Personnel Assignments**

#### **7–11. U.S. Army Reserve assignments and tenure**

*a. Tenured positions.* All USAR JA positions in the grades of O–5 and O–6 are tenured positions. All USAR JA DIMA LOD–E positions, SJA, CJA, and BJA positions, regardless of grade, are tenured positions. Assignment to all tenured positions will not exceed three years. TJAG or TJAG’s designee will determine processes and procedures for selection of officers to fill tenured positions.

*b. Military judge selections.* As TJAG’s designee, the Chief Trial Judge, U.S. Army Trial Judiciary, nominates military judges from eligible officers who apply to advertised vacancies. Selected officers must satisfactorily complete the next scheduled military judge’s course or be removed from the military judge position unless previously certified for military judge assignments by TJAG.

*c. Non-tenured assignments.* TJAG or TJAG’s designee will publish processes and procedures for selection of officers to fill non-tenured positions.

#### **7–12. U.S. Army Reserve overgrade assignments and promotions**

*a.* USAR JAs will be assigned to positions equal to or higher than the officer’s current grade.

*b.* USAR JAs may be assigned to a position one grade lower than the current grade of the officer only upon the prior written approval of TJAG or TJAG’s designee. The duration of an overgrade assignment will be at the discretion of TJAG but will normally not exceed one year. The criteria used to evaluate a request for an overgrade assignment includes the following:

# Exhibit 4

## Re: Urgent Matter: Non-Compliance with Court Order and Resultant Complications

Nick Harrison

Wed 8/16/2023 10:01 AM

To: Berman, Keri L. (CIV) <Keri.L.Berman@usdoj.gov>; Wynosky, Kevin J. (CIV) <Kevin.J.Wynosky@usdoj.gov>

Cc: Abbuhl, Joshua (CIV) <Joshua.Abbuhl@usdoj.gov>; Barghaan, Dennis (USAVAE)

<Dennis.Barghaan@usdoj.gov>

Ms. Berman:

Your recent response is, frankly, disappointing.

While the military seems to have made some superficial gestures to appoint me as an officer and enroll me in training, the practical reality is starkly different. My status has not been adequately reflected across necessary military records, systems, or actions. This has resulted in a series of challenges that are neither self-inflicted nor minor inconveniences.

One point of contention is your assertion that my superior officer offered an alternative travel option to the DCC. I can state unequivocally that this is inaccurate. Exactly which option was proffered to me? Are you suggesting that I should have undertaken travel to the DCC without official orders, logistical support, or travel arrangements, all out of pocket? Should I enumerate all the legal statutes, military regulations, and government policies which clearly outline why such a course of action is neither feasible nor permitted? I'd prefer that future communications from the DoJ refrain from including such groundless claims.

While I sense a genuine effort from some within my chain of command to find a viable solution, the tone and content of your response seem to be at odds with this intent. It raises a serious concern: If the DoJ's stance is indicative of the broader sentiment, perhaps it is prudent for me to file this motion as a precautionary measure. The Court needs to be informed of potential issues, especially if there's a lack of acknowledgment or willingness to rectify them on your end.

There are numerous avenues available to your client to rectify this predicament, ensuring that I can partake in the second phase of training (which is still scheduled) and remain on the promotion trajectory your office previously indicated to the Court. This necessitates a stance of responsibility, an earnest focus on compliance, and a decisive move away from attempts to sidestep the Court's directives.

Could you provide any assurance that your client intends to proactively address this matter in alignment with the commitments made during the previous court session? Or should I simply append this set of justifications when I move ahead with the *Motion to Show Cause*?

I await your considered response.

Very Respectfully,

**NICK HARRISON, JD, MBA, PMP**

Managing Partner (DC Bar #1024439)

Harrison-Stein, PC

601 Pennsylvania Avenue NW

South Building, Suite 900

Washington, DC 20004-3647

Office: (202) 434-8292

Cell: (202) 297-5057

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**From:** Berman, Keri L. (CIV) <Keri.L.Berman@usdoj.gov>

**Sent:** Tuesday, August 15, 2023 5:44 PM

**To:** Nick Harrison <nick@harrison-stein.com>; Wynosky, Kevin J. (CIV) <Kevin.J.Wynosky@usdoj.gov>

**Cc:** Abbuhl, Joshua (CIV) <Joshua.Abbuhl@usdoj.gov>; Barghaan, Dennis (USAVAE)

<Dennis.Barghaan@usdoj.gov>

**Subject:** RE: Urgent Matter: Non-Compliance with Court Order and Resultant Complications

Mr. Harrison,

We are in receipt of your emails concerning your proposed motion to show cause and have conferred with the Army and the D.C. Army National Guard. As explained below, none of the issues you mentioned prevent your attendance at the required Direct Commission Course (DCC). Nor do they reflect any noncompliance on the part of the government with any injunction in place relating to your service. As a result, we do not believe your proposed motion is factually supported or legally defensible.

As you will recall, the Army's obligations under the injunctions applicable to you are to: (1) reconsider you for a commission; and (2) not initiate involuntary separation proceedings against you. As to the former, you received your commission. As to the latter, the Army has not initiated involuntary separation proceedings against you and indeed cannot do so while that injunction is in place.

However, my understanding is that the commission you accepted comes with requirements that you, like every commissioned officer, are responsible for complying with. Specifically, we understand that you, like other commissioned officers, were scheduled to participate in the DCC with a reporting date of no later than August 13, 2023.

Your motion raises a number of issues regarding this mandatory training that you did not attend.

You were scheduled to participate in the DCC with a reporting date of no later than August 13, 2023. Although you did not receive written travel orders, you were made aware in advance by your superior officers of the fact that the DCC was occurring and that you were enrolled and had a reserved ATRRS seat. DCARNG is taking steps to have you placed in the October 9<sup>th</sup> DCC, and in the meantime you should attend scheduled drill and coordinate necessary steps to resolve any valid concerns by that time.

Second, your proposed motion raises an issue regarding your military ID but also notes that you received your new military ID card at least 5 days before your scheduled date of arrival at DCC. Regardless, military IDs are not required to attend this training and, indeed, many entrants to DCC are entering service for the first time and do not possess military IDs at all.

Third, you raise the issue of unspecified military systems. But there are no military systems to which you would have required access to appear at your scheduled DCC. Additionally, your motion indicates that the reason you lacked access to military systems (which again you do not specify) was as a consequence of the lack of an up to date military ID. But again, your motion acknowledges that the military ID issue was resolved in advance of your entry date.

Fourth, you raise the issue of account transition. But I understand that there is no manner in which account transition issues could have prevented you from attending DCC. Moreover, any such issues could have been resolved during DCC in-processing when, as noted, most entrants are beginning military service, with all accompanying systems and documentation, for the first time.

Fifth, the same holds true for your military email account, not only would this access issue not have prevented you from attending DCC, but it also could have been resolved during processing at DCC in the ordinary course. Additionally, you have not asserted that you actually lacked the information necessary to appear at your scheduled DCC, only that you did not receive updates through your military email account.

Sixth, access to a government travel card or the Defense Travel System is not necessary to attend DCC and generally is not provided because, as noted, most participants are entering service for the first time. Similar to military email and other accounts, travel reimbursements and other arrangements are handled in the administrative portion of the DCC. Your superior officer offered an option for travel to the DCC that did not require access to these items.

Seventh, dependent enrollment is the responsibility of the service member through the Dependent Enrollment Eligibility Reporting System (DEERS). If your partner qualifies as a dependent you must take the necessary steps to ensure that he is enrolled. This issue is entirely unrelated to your participation in DCC.

Finally, there is no reason for the Court's injunction to appear in your military personnel record nor does its presence or absence from your record have any bearing on your attendance at your scheduled DCC.

To the extent you decide to file your proposed motion despite this response, we ask that you attach this response to your motion.

Regards,  
Keri Berman

Keri L. Berman  
Trial Attorney, Civil Division  
United States Department of Justice  
Tel: 202-305-7538  
[Keri.L.Berman@usdoj.gov](mailto:Keri.L.Berman@usdoj.gov)

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**From:** Berman, Keri L. (CIV)  
**Sent:** Tuesday, August 15, 2023 4:59 PM  
**To:** Nick Harrison <[nick@harrison-stein.com](mailto:nick@harrison-stein.com)>; Wynosky, Kevin J. (CIV) <[Kevin.J.Wynosky@usdoj.gov](mailto:Kevin.J.Wynosky@usdoj.gov)>  
**Cc:** Abbuhl, Joshua (CIV) <[Joshua.Abbuhl@usdoj.gov](mailto:Joshua.Abbuhl@usdoj.gov)>; Barghaan, Dennis (USAVAE) <[DBarghaan@usa.doj.gov](mailto:DBarghaan@usa.doj.gov)>  
**Subject:** RE: Urgent Matter: Non-Compliance with Court Order and Resultant Complications

Mr. Harrison,

We are validating certain facts with DCARNG and will respond substantively to your initial email as soon as possible.

Regards,  
Keri Berman

---

**From:** Nick Harrison <[nick@harrison-stein.com](mailto:nick@harrison-stein.com)>  
**Sent:** Tuesday, August 15, 2023 8:00 AM  
**To:** Wynosky, Kevin J. (CIV) <[Kevin.J.Wynosky@usdoj.gov](mailto:Kevin.J.Wynosky@usdoj.gov)>  
**Cc:** Abbuhl, Joshua (CIV) <[Joshua.Abbuhl@usdoj.gov](mailto:Joshua.Abbuhl@usdoj.gov)>; Berman, Keri L. (CIV) <[Keri.L.Berman@usdoj.gov](mailto:Keri.L.Berman@usdoj.gov)>; Barghaan, Dennis (USAVAE) <[DBarghaan@usa.doj.gov](mailto:DBarghaan@usa.doj.gov)>  
**Subject:** [EXTERNAL] Re: Urgent Matter: Non-Compliance with Court Order and Resultant Complications

Please see the attached *Motion to Show Cause*. If I do not hear from your office before 5:00 p.m. today, I will file it with the U.S. District Court tomorrow morning.

Very Respectfully,

**NICK HARRISON, JD, MBA, PMP**

Managing Partner (DC Bar #1024439)  
Harrison-Stein, PC  
601 Pennsylvania Avenue NW  
South Building, Suite 900  
Washington, DC 20004-3647  
Office: (202) 434-8292  
Cell: (202) 297-5057

---

**From:** Nick Harrison

**Sent:** Saturday, August 12, 2023 9:33 PM

**To:** Wynosky, Kevin J. (CIV) <[Kevin.J.Wynosky@usdoj.gov](mailto:Kevin.J.Wynosky@usdoj.gov)>

**Cc:** Abbuhl, Joshua (CIV) <[Joshua.Abbuhl@usdoj.gov](mailto:Joshua.Abbuhl@usdoj.gov)>; Berman, Keri L. (CIV) <[Keri.L.Berman@usdoj.gov](mailto:Keri.L.Berman@usdoj.gov)>;  
Barghaan, Dennis (USAVAE) <[Dennis.Barghaan@usdoj.gov](mailto:Dennis.Barghaan@usdoj.gov)>

**Subject:** Urgent Matter: Non-Compliance with Court Order and Resultant Complications

Dear Mr. Wynosky,

I hope this message finds you well. I am writing to bring to your attention some pressing matters that have arisen since our last court hearing regarding my commission as an officer in the U.S. Army. As you may recall, your client, the U.S. Army, attested to its full compliance with Judge Brinkema's order. However, subsequent events suggest otherwise, and I believe it's imperative we address these issues promptly.

During the hearing, it was mentioned that I had been granted a commission, would be eligible for a higher rank upon completion of the necessary military education, and had been immediately enrolled in the next available course. However, I must bring to your attention a series of barriers placed before me by your client which have directly hindered my ability to fulfill these requirements:

1. **Military ID Card:** Despite my efforts to obtain a new military ID card, I was consistently informed I did not appear in the system. This obstacle was only overcome last Tuesday.
2. **System Access:** As a consequence of the above, I have been unable to access any military systems for the past three months, severely limiting my operational capabilities.
3. **Account Transition Issues:** Following my transition from the enlisted to the officer side, all my military profiles and accounts seem to have disappeared, with no indication of any effort to restore or recreate them.
4. **Military E-mail Account:** As of this moment, I still lack a military e-mail account. This prevents me from receiving most official military communications, including details of and updates about the courses I'm supposed to attend.
5. **Lack of Training Orders:** I have not received any formal orders to attend the aforementioned training courses.
6. **Travel Complications:** Without a government travel card or access to the defense travel system, and with no assistance provided to me, I have been unable to secure any travel arrangements.

7. **Dependent Documentation:** My partner, whom I wish to enlist as a dependent, remains unlisted in all records. Consequently, obtaining a military identification card for him has proven impossible.

8. **Court Injunction:** The court's injunction has not been incorporated into iPerms, causing further complications.

Your client's assertion of compliance contrasts starkly with my experience. Although the U.S. Army claims adherence to the court's order and acknowledgment of my commission, these declarations aren't mirrored in its records, systems, or actions. These circumstances caused me to miss the report time on Sunday for the first phase of the scheduled training for my role in the JAG Corps.

I am reaching out in the hope that we can engage in a constructive dialogue and collaboratively address these concerns. My earnest wish is to circumvent the necessity of returning to Judge Brinkema so soon after our previous hearing.

I appreciate your attention to this matter and look forward to your timely response. I believe that with your assistance, we can facilitate a seamless transition for me into the role I have been entrusted with and ensure that the U.S. Army's commitment to the court's directives is unequivocally demonstrated.

Very Respectfully,

**NICK HARRISON, JD, MBA, PMP**

Managing Partner (DC Bar #1024439)

Harrison-Stein, PC

601 Pennsylvania Avenue NW

South Building, Suite 900

Washington, DC 20004-3647

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# Exhibit 5

**RE: Urgent Matter: Non-Compliance with Court Order and Resultant Complications**

GRANDPIERRE, PAUL LTC USARMY NG DCARNG (USA) <paul.grandpierre.mil@army.mil>

Wed 8/16/2023 5:55 PM

To: Nick Harrison <nick@harrison-stein.com>

Cc: Koroma, Mariatu R 1SG USARMY NG DCARNG (USA) <mariatu.r.koroma.mil@army.mil>; Strickland, Lejuan Terrell MAJ USARMY NG DCARNG (USA) <lejuan.t.strickland.mil@army.mil>

 1 attachments (16 KB)

DCC Waiver Request.docx;

1LT Harrison

Thank you for your comments. Please note that if you wish to request a DCC waiver, you will have to draft a DCC waiver request memorandum formatted and structured IAW AR 25-50. Please find a basic DCC waiver request template attached, which you may use as a guide in drafting your waiver request.

When you have completed your waiver request memo, please convert it to .pdf, sign it, and submit it to me for further routing. I will then forward your request to NGB for NGB concurrence, and then the request will be routed to PPTO for TJAG's final approval. You also have the option of requesting a DCC/BOLC "bifurcation" using the same template/memo format. You would just indicate that you are requesting bifurcation and state your grounds for bifurcation.

Please understand that you have agency and autonomy over the direction of your new career as an Army officer. While you may be free to consider extraneous factors and to introduce those factors into the waiver request process, the DCARNG would not have any equities in those extraneous factors.

My role (on behalf of the DCARNG) in either a waiver request or a bifurcation is to route your request to NGB. The only factors guiding my purely ministerial act are NGB and OTJAG policy. Again, please note that waiver requests are "... considered on a case-by-case basis for extreme personal or professional hardship reasons...". Accordingly, you may want to manage your expectations. In evaluating your request, NGB and TJAG will be guided by higher strategic priorities and the best of interest of the Army and the JAG Corps.

Very respectfully,

PAUL GRANDPIERRE  
Lieutenant Colonel, Deputy Staff Judge Advocate  
Joint Force Headquarters  
Office of the Staff Judge Advocate  
District of Columbia National Guard  
Phone: 202-306-5678  
[paul.grandpierre.mil@army.mil](mailto:paul.grandpierre.mil@army.mil)

**CUI**

Controlled by: DCNG-OSJA

CUI Categories: AWP

Limited Dissemination Control: FED

POC: Paul Grandpierre, Lieutenant Colonel, LTC, JA, 202-306-5678

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**From:** Nick Harrison <nick@harrison-stein.com>

**Sent:** Wednesday, August 16, 2023 11:23 AM

**To:** GRANDPIERRE, PAUL LTC USARMY NG DCARNG (USA) <paul.grandpierre.mil@army.mil>

**Cc:** Koroma, Mariatu R 1SG USARMY NG DCARNG (USA) <mariatu.r.koroma.mil@army.mil>; Strickland, Lejuan Terrell MAJ USARMY NG DCARNG (USA) <lejuan.t.strickland.mil@army.mil>

**Subject:** [Non-DoD Source] Re: Urgent Matter: Non-Compliance with Court Order and Resultant Complications

LTC Grandspierre:

Thank you for your communication. I wish to confirm that I did indeed receive the correspondence from DA JARO dated 4 April 2023, which details the requirements for newly appointed Judge Advocates.

I understand the desire to maintain a distinction between legal discussions and JFHQ unit/command matters. However, given the intertwined nature of my current situation, I've felt it imperative to make all parties aware of the military's prevailing legal posture. Such transparency ensures that the actions I take, and the reasons behind them, are clear and comprehensible to everyone involved.

The present legal position of the military places me in a challenging spot. The assertion that retroactive measures are impossible due to my absence of specific training necessitates a specific response on my part. The only viable response I can provide concerning any required training for career progression is straightforward: "What's the next class? Sign me up." This stance isn't just a matter of complying with protocol; it's about safeguarding my position against any potential legal ramifications.

Any deviation from this, such as missing a scheduled class date, only further complicates the situation. That is primarily why I've been proactive in addressing this matter, aiming to foresee potential challenges and seeking to mitigate them as early as possible.

I'd like to emphasize that I do not seek a waiver to DCC out of convenience or personal preference. Seeking such a waiver, in my view, could inadvertently lend credence to the notion that I'm looking for shortcuts in training. This is far from the truth and only reinforces the military's current legal position.

But considering the existing circumstances, I am prepared to propose this option, not out of desire but out of necessity, to ensure continuity and to stave off further legal complications. What I require is an acknowledgment and understanding of this stance, understanding that my principal objective remains unwavering: I will not jeopardize my legal position.

I genuinely hope for a productive resolution that serves both my interests and those of the DCARNG.

Very Respectfully,

## NICK HARRISON, JD, MBA, PMP

Managing Partner (DC Bar #1024439)

Harrison-Stein, PC

601 Pennsylvania Avenue NW

South Building, Suite 900

Washington, DC 20004-3647

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Cell: (202) 297-5057

---

**From:** GRANDPIERRE, PAUL LTC USARMY NG DCARNG (USA) <[paul.grandpierre.mil@army.mil](mailto:paul.grandpierre.mil@army.mil)>

**Sent:** Wednesday, August 16, 2023 11:01 AM

**To:** Nick Harrison <[nick@harrison-stein.com](mailto:nick@harrison-stein.com)>

**Cc:** Koroma, Mariatu R 1SG USARMY NG DCARNG (USA) <[mariatu.r.koroma.mil@army.mil](mailto:mariatu.r.koroma.mil@army.mil)>; Strickland, Lejuan Terrell MAJ USARMY NG DCARNG (USA) <[lejuan.t.strickland.mil@army.mil](mailto:lejuan.t.strickland.mil@army.mil)>

**Subject:** RE: Urgent Matter: Non-Compliance with Court Order and Resultant Complications

1LT Harrison,

Please confirm for me that you received the attached correspondence from DA JARO, as these govern your attendance at DCC. A JARO letter addressed to you dated 4 April 2023 provided:

“All newly appointed Judge Advocates, regardless of prior service, are required to complete both the Direct Commission Course (DCC), [Fort Moore], Georgia, and JAOBC, Charlottesville, Virginia. **Waiver of DCC may be considered on a case-by-case basis for extreme personal or professional hardship reasons.** Waiver requests will be processed through NGB for consideration by TJAG.”

While we appreciate your candor and willingness to share details concerning your interactions with DOJ, we encourage you to focus your correspondence and communications with us on JFHQ unit/command matters. You are a valued member of our team and as such we look forward to working with you on matters related to your service in, and your continued integration into, the broader DCARNG. As such, please feel free to initiate a request for a DCC waiver and JFHQ (e.g., the addressees and others) will process and route your request, as appropriate.

Very respectfully,

PAUL GRANDPIERRE

Lieutenant Colonel, Deputy Staff Judge Advocate

Joint Force Headquarters

Office of the Staff Judge Advocate

District of Columbia National Guard

Phone: 202-306-5678

[paul.grandpierre.mil@army.mil](mailto:paul.grandpierre.mil@army.mil)

## CUI

Controlled by: DCNG-OSJA

CUI Categories: AWP

Limited Dissemination Control: FED

POC: Paul Grandpierre, Lieutenant Colonel, LTC, JA, 202-306-5678

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**From:** Nick Harrison <[nick@harrison-stein.com](mailto:nick@harrison-stein.com)>

**Sent:** Wednesday, August 16, 2023 10:25 AM

**To:** Strickland, Lejuan Terrell MAJ USARMY NG DCARNG (USA) <[lejuan.t.strickland.mil@army.mil](mailto:lejuan.t.strickland.mil@army.mil)>

**Cc:** GRANDPIERRE, PAUL LTC USARMY NG DCARNG (USA) <[paul.grandpierre.mil@army.mil](mailto:paul.grandpierre.mil@army.mil)>; Koroma, Mariatu R 1SG USARMY NG DCARNG (USA) <[mariatu.r.koroma.mil@army.mil](mailto:mariatu.r.koroma.mil@army.mil)>

**Subject:** [Non-DoD Source] Fw: Urgent Matter: Non-Compliance with Court Order and Resultant Complications

MAJ Strickland:

Thank you for your prompt update and for your proactive efforts to address this issue. I sincerely appreciate the dedication you've shown to find a resolution.

I would like to share with you some recent correspondence I've had with the DoJ. As you'll notice in the attached email thread, they are asserting that I'm to blame for not making the report time on Sunday. Their current position might be indicative of potential legal complications down the line.

I wholeheartedly agree that securing my spot in the October DCC serves as a prudent fallback option, given the current circumstances. That said, obtaining a waiver for the DCC remains the most viable solution to ensure that I can keep the second training reservation and adhere to the timeline for promotion, as presented by the DoJ at the last hearing. Failing to maintain this timeline will, unfortunately, result in further legal entanglements, taking me back before the Court.

I trust in the efforts of yourself and LTC Grandpierre to help find an optimal solution. I am committed to doing whatever is required on my end to facilitate this process. If there are any further "do outs" or tasks pending from my side, please do inform me.

Thank you once again for your support and understanding.

Very Respectfully,

**NICK HARRISON, JD, MBA, PMP**

Managing Partner (DC Bar #1024439)

Harrison-Stein, PC

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# Exhibit 6

## Updating iPerms File with Essential Documents

Nick Harrison

Fri 7/21/2023 6:33 PM

To:Cochran, Latanya SFC USARMY NG DCARNG (USA) <latanya.cochran.mil@army.mil>;Arrington, Anika E SPC USARMY NG DCARNG (USA) <anika.e.arrington.mil@army.mil>

Cc:Strickland, Lejuan Terrell CPT USARMY NG DCARNG (USA) <lejuan.t.strickland.mil@army.mil>

I hope this message finds you well. As you may be aware, I am currently in the process of obtaining my CAC card and, consequently, I am unable to utilize some of the self-service options. Despite this limitation, I would like to ensure that my iPerms file is updated promptly with important personal documentation.

Attached to this email, you will find the following documents:

- Divorce Decree
- Domestic Partnership
- Court Injunction

I understand that the inclusion of a court injunction is not typical. However, given its significance and implications, I believe it is crucial to have it added to my personnel file. Upon review of the document, the reasoning for its inclusion should become apparent.

If you have any questions, concerns, or need further information, please feel free to reach out to me. Your assistance in this matter is greatly appreciated, and I am eager to ensure my records accurately reflect my current personal circumstances.

Thank you for your attention to this matter.

Very Respectfully,

**NICK HARRISON, JD, MBA, PMP**

Managing Partner (DC Bar #1024439)

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