

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

NICK BASSEN, <i>et al.</i>, <i>Plaintiffs,</i> v. UNITED STATES OF AMERICA, <i>Defendant.</i>	No. 23-211 Judge T. Dietz
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JOINT STATUS REPORT

Pursuant to the Court’s March 30, 2026, Order (ECF 120), the Court granted the Joinder of 750 additional plaintiffs who have now been added pursuant to the plaintiffs’ Second Amended Complaint (ECF 123) of April 10, 2026. The Court also required the parties to file a “joint status report regarding further proceedings for the newly joined plaintiffs” by May 1, 2026. The parties therefore respectfully submit this joint status report with their respective positions.

Plaintiffs Position

Given the current state of the proceedings on the defendant’s voluntary remand under RCFC 52, plaintiffs’ counsel proposes the following schedule and timelines for remanding the additional 750 plaintiffs to their respective military service branch’s records correction boards:

1. Counsel is prepared to provide a list of the names of 100 additional plaintiffs to be remanded to each of their respective service correction boards for analysis in light of the Court’s rulings, the relevant BCMR decisions already rendered, the applicable

Executive Order, all governing SecWar directives, and the laws, procedures, and precedent governing servicemember relief before the Boards.

- A. For each plaintiff, their counsel will provide a shortened records correction package that will include (a) documents evincing a valid Military Pay Act (MPA) claim, typically a DD-214 Certificate of Discharge form, retirement request, or curtailment of military orders; and/or (b) documents showing the plaintiff servicemember's refusal of the Covid-19 vaccine and adverse actions taken against the servicemember; (c) for those seeking Reinstatement, all applicable statements and documents as per ongoing SecWar and Department Guidance, (d) for those who had a Religious or other exemption request to the Mandate, documents or statements evincing that; and/or (e) Separation and/or other adverse action by military authorities against the plaintiff.
 - B. In sum, for each plaintiff, counsel will provide documents and/or statements showing that each servicemember has entitlement to relief in this Court under at least Claim I (10 USC §1107a) and also (possibly) under Claim II (RFRA) for cognizable harms as a result of adverse actions taken against them that violated federal law, which caused "money mandating harms" in Court of Federal Claims parlance, and that the actions taken thereon were void *ab initio*.
2. Plaintiffs' counsel proposes that each month, beginning on June 1 and every month thereafter, counsel will provide a new list of the next additional 100 names until such time as the entire list is exhausted (if not subsequently amended to add more

members). For the absence of mistake, with the current list of 750, that would mean the final list of 50 names would be provided on January 1, 2027.

3. For each list of 100 names, the correction boards should have 75 days to provide the proposed corrective relief for each servicemember, after which the parties will provide notice under RCFC 52.2 within 30 days whether the relief is acceptable or whether further proceedings are necessary, in similar fashion to the Court's prior Order for named plaintiffs in ECF 104.
4. For additional judicial consideration: (a) plaintiffs' counsel point out that there exist expedited pipelines through the Executive Order's Covid-19 Reinstatement program for those members who return to active duty service; somewhere in the range of 15-20% of the members who will be on these lists will be moving through those Covid-19 Reinstatement channels; (b) of the first 100 names for remand on June 1, 57 are Army plaintiffs whose packages were delivered to the Army BCMR in February and March, the latest batch of 9 on 18 March 2026; 7 plaintiffs were sent to the Air Force under its Covid-19 Reinstatement program in January and February 2026; and the remaining 36 plaintiffs were sent to the BCNR through its Covid-19 Reinstatement and Reconciliation program. In other words, the *first 100 names are all already known to and in front of the Boards*, so the requested deadline of 75 days is in reality 120 days or longer from when the packages were originally received.
5. The Army Board annually handles between 8,000-9000 petitions; the BCNR averages between 10-12,000; and the Air Force is generally in the range of 5,000. The 750 proposed plaintiffs constitute less than 1% of the annual total for any of the individual boards when split among them and spread over the 8 months proposed.

Government's Position

The United States maintains its position that it would be more detrimental than helpful for the Court to impose arbitrary deadlines by which the various military boards are to complete their review of any claims submitted to the boards by any or all of the additional plaintiffs joined to this action on March 30, 2026, *see* Order (ECF 120). Moreover, the 75-day deadline suggested by plaintiffs' counsel to resolve the considerable volume of new matters plaintiffs' counsel expects to submit to the various military boards is very unrealistic based on information provided to record counsel for the United States.

The United States previously explained, during the status hearing held by the Court on March 19, 2026, in advance of the Court granting the motion to join an additional 750 plaintiffs, that the various military boards are working with all deliberate speed to resolve all cases related to COVID-19 discharges in an expeditious manner. However, we also explained that we anticipated that imposing any arbitrary deadlines on processing these new claims would most likely hinder resolution as the military boards are already overburdened in trying to resolve COVID-19 related matters. Significant efforts are being expended to develop new procedures to resolve these cases expeditiously, and requiring the military boards to implement extra additional procedures to resolve the claims brought by the additional 750 plaintiffs would be untenable.

More specifically, we explained that the various military branches continue to implement new policies and guidance and the boards are developing new procedures to expedite processing of the numerous claims presented by servicemembers impacted by COVID-19 discharges. These efforts by the military branches and boards are designed to resolve these numerous new matters efficiently and effectively. There is already

considerable effort already being expended to resolve all new claims, only some of which are involved in the present lawsuit, in an orderly, fair, and efficient manner.

We also understood from the discussion during the status hearing that the Court was reluctant to impose unrealistic deadlines on those new procedures, especially if the deadlines imposed by the Court would most likely result in repeated requests for extensions of time. The United States anticipates at this juncture that the imposition of an unrealistic 75-day timeframe in which to resolve new claims submitted by plaintiffs' counsel—if imposed by the Court—will result in numerous, repeated requests for extensions by the United States, a result the Court expressed a desire to avoid. Imposing these deadlines would also hinder the military boards' ability to develop efficient practices in general, as these plaintiffs' claims could require the various boards to further segregate these matters from the new procedures and resources, which could defeat plaintiffs' desire to resolve plaintiffs' claims expeditiously.

Moreover, we recognize that the Court and the plaintiffs seek updates chronicling the military boards' efforts to process claims, including those of the numerous plaintiffs in this case. The United States therefore maintains that routine status reports would serve a more useful purpose than the Court implementing deadlines that could further hinder the already heavily burdened military boards.

The United States also notes that the procedures proposed by plaintiffs in this joint status report, *i.e.* shortened records, may additionally hinder claims presented to the various military boards by these plaintiffs. While the United States continues to seek ways to gain efficiencies in resolving these numerous COVID-19 matters, the imposition of any requirement that the military boards resolve these matters on shortened records may be

more likely to hinder resolution than streamline it. It remains unclear at this juncture whether a shortened records process could be employed. As a baseline consideration, the military boards must evaluate each claim on its merits, so to the extent plaintiffs' proposed shortened records procedure operates from a premise that blanket relief must be afforded, this will most likely result in operational difficulties.

In sum, the various military boards are prioritizing COVID-19 related petitions, and the United States remains committed to resolving the claims of the numerous plaintiffs in this case as expeditiously as practicable. However, imposing unrealistic timelines on the resolution of these cases, which are part of the substantial volume of new matters being considered by the military boards, will only hinder the efficient and expeditious resolution of these cases. Accordingly,

Dated: May 1, 2026

Respectfully submitted,

– and –

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2026, I electronically filed the foregoing notice with the Clerk of the Court by using the CM/ECF system, which will notify all attorneys of record of the filing.

/s/ Dale Saran