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**Protect Our
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SEXUAL VIOLENCE AND DISCRIMINATION IN THE U.S. MILITARY

Submission to the United Nations Universal Periodic Review of the
United States of America, Fourth Cycle, November 2025
Fiftieth Session of the UPR, Human Rights Council

Submitted on April 7, 2025, by:

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Cornell Law School's Veterans Law Practicum provides free legal services to veterans living with disabling psychiatric conditions (including PTSD), traumatic brain injuries, and survivors of military sexual trauma for disability benefits claims and discharge upgrade requests.

Cornell Law School's Gender Justice Clinic works on cases and projects that contribute to local, national, global, and transnational efforts to address gender-based violence and discrimination.

Protect Our Defenders Foundation is dedicated to ending sexual violence, victim retaliation, misogyny, sexual prejudice, and racism in the military and combating a culture that has allowed it to persist.

Service Women's Action Network is a nationwide nonprofit organization that advocates for and supports the needs of service women and women veterans, regardless of rank, military branch, or years of experience, with the goal of ensuring they receive the opportunities, protections, benefits, and respect they have earned.

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I. ISSUE SUMMARY

1. Military sexual assault embodies a critical intersection between violence and discrimination within the U.S. armed forces, degrading military integrity and the safety of its members. The military is rife with “subcultures of misogyny” and “harmful beliefs and attitudes on race, ethnicity, sexual orientation [and] gender identity” that continue to perpetuate sexual violence and discrimination.¹ Recent decisions of the Trump administration heighten these discriminatory practices and beliefs. President Trump signed Executive Order 14183, which bans transgender people from serving in the military, imputes dishonor into being transgender, and prohibits the use of “gender ideology” language within military programming,² and Executive Order 14185, ending diversity, equity, and inclusion programs in the military.³ The newly appointed Secretary of Defense, Pete Hegseth, has outwardly expressed his disapproval of women in combat and the military efforts to promote diversity, equity, and inclusion, as well as faced allegations of abuse and sexual assault himself, prompting concerns about the messages and incentives of future military leadership.⁴ While only time will reveal the full impact of the recent Trump administration’s actions on military sexual assault, the pressing nature of these issues demands immediate attention and a proactive response to prevent further harm. This report discusses the pervasive issue of sexual assault and violence within the U.S. military, as well as the undercurrents of discrimination that erode equity and safety within the armed forces.
2. Sexual assault within the U.S. military is a pervasive issue that affects thousands of service members each year. The United States currently lacks adequate measures to prevent military sexual violence and does not yet ensure that service members who experience such violence are protected from retaliation and have access to justice. Sexual assault and harassment continue to be perpetrated at alarmingly high rates within the U.S. military. According to the U.S. Department of Defense (“DoD”), an estimated 6.8% of active-duty service women and 1.3% of active-duty service men experienced unwanted sexual conduct in 2023. Based on these rates, the DoD estimates around 29,061 service members experienced some form of unwanted sexual conduct in Fiscal Year 2023.⁵ However, a report by the Costs of War project at Brown University indicates that the actual numbers of sexual assaults in the military are likely two to four times more frequent than the Pentagon estimates, or over 73,600 service members in 2023.⁶

3. Recognizing that “sexual assault and sexual harassment remain persistent and corrosive problems”⁷ for service members, former U.S. Secretary of Defense Lloyd Austin established a 90-day Independent Review Commission (“IRC”) to assess these problems.⁸ At the conclusion of its review period, the IRC published its findings in a report (“IRC Report”), in which it explained that “victims of sexual assault and sexual harassment in the military are all too often doubly betrayed: by the Service member[s] who harmed them, and by the commanders who failed to protect them—or neglected to support them after reporting.”⁹ The IRC also noted that a “broken culture is the root of sexual harassment and sexual assault policy failures over the past two decades.”¹⁰ The Commission offered recommendations to improve military culture and climate, prevent sexual assault and harassment, effectively care for victims, and hold perpetrators responsible for their actions.¹¹
 4. Following publication of the IRC Report, Congress enacted legislation that removed authority for investigating and prosecuting sexual violence and other “covered” offenses from military commanders and conferred such authority on the Offices of Special Trial Counsel, newly established independent offices within the military.¹² Previously, the military criminal legal system was unable to afford adequate redress to survivors given that commanders are not positioned to be impartial and lack substantial legal training in handling sexual violence cases. The newly given authority to the Offices of Special Trial Counsel relieves this tension between the commander’s duty to carry out justice and their responsibility for maintaining unit cohesion and combat readiness.¹³ President Donald Trump’s early executive actions, however, raise serious doubts as to whether the U.S. Government will carry out the Biden administration’s plans to fully operationalize the Offices of Special Trial Counsel and implement the IRC’s other core recommendations.¹⁴
 5. Moreover, further systemic reform is needed for these initiatives to effectively prevent and punish military sexual assault. The U.S. military has historically fostered a discriminatory and misogynistic culture that enables sexual harassment and violence, delegitimizes the magnitude of the issue, and produces inadequate prevention procedures. Under such toxic command climates, survivors who report sexual harassment and assault are likely to face retaliation rather than adequate care and support. The Trump administration’s recent executive orders and associated policy changes noted above perpetuate discrimination based on gender, sexual orientation, race, ethnicity or other marginalized identities and negatively impact the military’s ability to prevent and respond to sexual violence.¹⁵ Additionally, structural problems such as a lack of independence, expertise, and specialization among legal advocates and adjudicators compromise the military criminal legal system’s ability to afford redress to survivors. The U.S. legal system also denies survivors of military sexual assault equal access to remedies in civil and criminal civilian courts. These challenges are discussed in more detail below.
- A. The U.S. Military Fosters a Culture of Misogyny that Promotes Sexual Violence and Discrimination.**

6. The U.S. military fosters a culture of misogyny that has enabled sexual violence to occur with regularity and impunity. According to the IRC Report, this culture allows for “the

perpetuation of harmful gender stereotypes, widespread cultural norms of victim blaming and rape-myth acceptance, and hostility and exclusion that extends to multiple vulnerable populations within the force.”¹⁶ Studies show a direct correlation between this toxic unit culture and an increased risk of sexual violence.¹⁷ The correlation is reinforced by high profile cases such as the sexual harassment and murder of Army Specialist Vanessa Guillén in 2019,¹⁸ or the revelation in 2017 of a 30,000-member Facebook group of Marines that circulated thousands of nude images of female service members without their knowledge or consent,¹⁹ which have highlighted “the insidious problem created by a culture that has tolerated deviant behaviors that lead to sexual harassment and assault.”²⁰

7. This culture of misogyny and violence has “broken trust between service members and their leaders, and the military they volunteered to serve.”²¹ Service women’s perceptions of unit support in cases of sexual violence remain significantly more negative than those of male service members.²² A DoD report found that 62% of women did not trust the system to protect their privacy after an incident of sexual assault and 57% did not believe the military fully ensured their safety or treated them with dignity and respect after reporting.²³ The DoD estimates that only 30% of active-duty women reported their experiences of sexual assault, with studies demonstrating that members often avoid reporting out of fear of backlash from military peers or a belief that nothing would be done.²⁴
8. As the United States has recognized, “leaders’ actions or inactions have direct consequences that impact the risk of sexual violence and unit climate.”²⁵ Further, “many [c]ommanders simply do not treat sexual harassment and sexual assault with the same level of time or attention that they treat a broken vehicle.”²⁶ The study by Brown University similarly found that “military institutions prioritized force readiness above all else, allowing the problem of sexual assault to fester,” and “even potentially useful resources and policies were delegitimized by the general climate and the specific focus on force readiness....”²⁷ A painful irony in this prioritization is that the failure to prevent and respond to misogynistic culture and systemic sexual assault directly harms force readiness. Moreover, in a significant number of military sexual harassment cases, commanders are themselves harassers—an estimated 44% of women and an estimated 35% of men identified at least one alleged offender as someone in their chain of command.²⁸
9. The DoD’s 2023 annual report on sexual assault in the military reported on the still unacceptably high numbers of sexual assaults and their disproportionate impact, with prevalence among service women more than five times higher than among service men,²⁹ showing that prevention efforts are far from sufficient. Both the IRC Report and a 2021 report by the RAND Corporation found that the military’s prevention activities tend to focus on building awareness of the issues rather than implementing evidence-based strategies that help service members develop skills and capabilities to prevent sexual violence from occurring in the future.³⁰ Ineffective implementation of prevention trainings has prompted further discriminatory perceptions amongst male service members that they must ostracize female service members. The IRC reports that many male members interpreted the message of prevention trainings as: “Don’t touch a female; don’t look at a female; and don’t talk to a female” to avoid getting in trouble.”³¹

B. The Trump Administration's Recent Actions Perpetrate Discrimination and Foster Sexual Violence.

10. Discrimination and harassment based on race, ethnicity, gender identity, and sexual orientation are widespread within the military.³² Among active-duty service women, 16.1% reported experiencing gender discrimination and 24.7% reported experiencing sexual harassment in 2023.³³ Transgender service members, who now have been told by Executive Order 14183 that their identity is dishonorable and they will be forced out of the military, are already deeply familiar with discrimination; a 2020 survey of transgender service members found that 93% reported experiencing at least one instance of gender-related discrimination in the military.³⁴ Moreover, one in three Black service members report experiencing racial/ethnic harassment in the past year.³⁵ A culture that values traditionally masculine ideals and stigmatizes other identities places these individuals at an increased risk of sexual harassment and assault.³⁶ Moreover, service members with intersectional identities “do not bear the burden of sexual violence equally” because these experiences of sexual harassment and assault are inextricably linked with their race, ethnicity, sexual orientation, or gender identity.³⁷
11. Despite inadequate data collection on the linkages between racial, ethnic, gender, or sexual orientation discrimination and sexual violence,³⁸ studies have indicated heightened levels of sexual assault within marginalized groups. Lesbian, gay, and bisexual service members, for example, experience sexual assault at disproportionately higher rates compared to their heterosexual peers.³⁹ One study found that while just 12% of service members identify as “other than heterosexual,” they accounted for approximately 43% of all sexually assaulted service members.⁴⁰ Another study indicated that Black female service members face a disproportionate risk of military sexual trauma,⁴¹ while a survey on sexual harassment in military academies revealed that Hispanic women and men identifying as some other race (i.e., American Indian, Native Hawaiian/Pacific Islander, or multi-racial) were more at risk for unwanted sexual contact.⁴² The death of Private First Class LaVena Johnson, for example, exemplifies the intersection of race and sexual assault.⁴³ During her deployment in Iraq, Johnson was found dead in her tent, and despite evidence of rape and battery, the military ruled her death a suicide—the IRC noted that many of her family members, friends, and outside stakeholders believe the case has not received justice because Johnson is a Black woman.⁴⁴ Moreover, experiences of discrimination coupled with lack of representation fosters distrust and dissuades survivors from reporting.⁴⁵
12. Rather than taking meaningful action to address discrimination, in January 2025, U.S. President Trump issued an executive order abolishing every Diversity, Equity, and Inclusion office within the DoD.⁴⁶ The prohibition on programs designed to prevent discrimination in the military will allow such discrimination to continue, increase dis among affected service members and impede the military’s ability to prevent and respond to sexual violence. Indeed, following the order, some branches of the military halted critical sexual assault prevention programs, while determining how they might need to be changed to reflect the ban on diversity, equity, and inclusion in federal programs.⁴⁷ There are also indications that these prevention programs may be permanently eliminated; for example, a January 2025 Navy memorandum listed the Sexual Assault Prevention and Response Program among command directives to be canceled. Military leadership

subsequently clarified that the programs are to be revised rather than canceled, but great uncertainty remains as to when or if the programs will be fully restored.⁴⁸

13. In the first weeks of his second term in office, President Trump also issued an executive order entitled “Prioritizing Military Excellence and Readiness,” which bans transgender service members from the military. The order states that “adoption of a gender identity inconsistent with an individual’s sex conflicts with a soldier’s commitment to an honorable, truthful, and disciplined lifestyle” and that those “expressing a false ‘gender identity’ divergent from an individual’s sex cannot satisfy the rigorous standards necessary for military service.”⁴⁹ The order also ends support for gender-affirming health care, eliminates the choice of terms of address, and restricts the use of facilities.⁵⁰ A subsequent policy memorandum affirmed that all openly transgender or nonbinary service members will be processed for separation from the military.⁵¹ This new ban on transgender service is egregiously and obviously discriminatory, and by requiring the removal of highly trained and qualified service members from their positions, it directly works against the executive order’s stated purpose of promoting force readiness.
14. This discrimination against transgender service members is not new; the previous Trump administration also implemented a ban on transgender military service.⁵² The current ban is even more expansive, however, because, unlike the earlier law, it does not contain an exception for service members who joined before the policy took effect, and its criteria for obtaining a waiver are so restrictive and contradictory that it is unlikely that anyone could qualify.⁵³ The Veteran’s Affairs department has extended the ban on gender-affirming health care to not only current service members but also to Veterans.⁵⁴ As Amnesty International has written, these actions by the U.S. government “attack transgender people directly contravene human rights protections for all people and are a huge step backwards for equality.”⁵⁵ While the federal judiciary temporarily blocked the executive order in March 2025,⁵⁶ the future for transgender service members remains grim. The recent actions of Trump administration foreshadow further discrimination and sexual violence with the U.S military, leaving little regard for appropriate remedies and redress for impacted service members, especially those with intersectional identities.

C. The U.S. Military Criminal Legal System Denies Survivors Access to Adequate Redress.

15. The military criminal legal system does not afford survivors, including those with intersectional identities, adequate redress for sexual harassment and discriminatory practices. The toxic culture discussed above contributes to low reporting rates; only an estimated 25% of military sexual assault survivors reported their experience of sexual assault to authorities in fiscal year 2023.⁵⁷ For survivors who do report, prosecution and conviction rates are extremely low. In fiscal year 2023, service members made 8,515 formal reports of sexual assault, of which 2979 (35%) were made and handled through the restricted reporting system,⁵⁸ which – unlikely the unrestricted reporting system – does not provide for investigation and a judicial remedy.⁵⁹ Of the 3,379 case dispositions that were completed in 2023, only 169 resulted in a conviction at trial.⁶⁰ These figures are miniscule, particularly when considering that an estimated 29,601 service members experienced unwanted sexual contact in FY2023.⁶¹

16. Lack of impartiality and independence within the military criminal legal system, including the authority historically afforded to commanders over the prosecution of sexual violence cases, has contributed to this denial of redress for many survivors. . In December 2022, Congress enacted landmark legislation that moved prosecutorial authority from the chain of command to the independent Offices of Special Trial Counsel. This reform marked a critically important step towards remedying the structural problems that denied survivors access to adequate redress. However, as noted by former President of the National Institute of Military Justice Rachel Van Landingham, “[w]hile the military lawyers are ‘independent’ in the sense that they no longer are part of the accused or victim’s chain of command, instead working for civilian service secretaries, the entire military justice structure is one that lacks independence and impartiality.”⁶² However, the impartiality and effectiveness of the new system remains to be seen as it moves forward.⁶³
17. Recent federal government actions raise serious concerns about the independence of the military criminal legal system. In February 2025, Secretary of Defense Pete Hegseth fired several top military leaders, including the top lawyers, known as Judge Advocate Generals (JAGs), of the Army, Air Force and Navy.⁶⁴ Don Christensen, a retired military judge who served as the Air Force’s chief prosecutor, described the administration’s actions as an “extremely concerning” move to implement “more compliant people in those positions.”⁶⁵ The Trump Administration’s attempts to manipulate the military justice system to further its political agenda heightens flaws within the court system and severely threatens the military legal system’s ability to ensure justice and redress.
18. Lack of specialized expertise and specialization among military justice practitioners also threatens the effectiveness of the new Offices of the Special Trial Counsel. As the IRC has explained, “historically, regardless of occupational specialty, military Service members are subject to continuous personnel rotations which contribute to an inexperienced military justice workforce with subpar qualifications to handle special victim cases.”⁶⁶ In 2021, the DoD required the military to establish specific career paths that would allow military attorneys to specialize as litigators. However, a 2024 U.S. Government Accountability Office study found that problems such as lack of tailored experience standards for supervisory litigators and defense counsel and the absence of a plan for collecting data and evaluating the effectiveness of the career paths impede the military’s ability to increase the experience and competence of its litigators.⁶⁷ In addition, because the number of cases going to court-martial have decreased over time, military lawyers have few opportunities to practice trial skills, particularly in prosecuting, defending, and adjudicating sexual offense cases..⁶⁸ This decline in court-martial proceedings limits their experience in handling military sexual assault cases within the specialized military justice system. Similarly, administrative separations—though considered a form of “adjudication”—are not criminal, proceedings and dependent upon the situation can be used in lieu of a court-martial proceeding. As a result, they do not provide meaningful access to the trial experience, nor do they allow military justice lawyers to prosecute sexual assault cases in a military criminal forum. The combination of fewer court-martial cases and the limited value of administrative separation proceedings contributes to insufficient in-court experience, ultimately leading to lower conviction rates and decreased victim satisfaction.

19. Compounding the problem of apathetic commanders, even if an assault gets before a judge at courts-martial, sentencing tools are much more limited than those available to civilian courts. While the Manual for Courts Martial specifies maximum sentences, the absence of sentencing guidelines between the floor and this upper limit produces “wildly disparate” sentences.⁷⁰ Further, military judges and court officials cannot sentence convicted perpetrators to supervised release (which requires perpetrators to “refrain from criminal activity, cooperate with authorized collection of DNA samples, and submit to periodic drug testing”) or require them to meet rehabilitation requirements, either during confinement or post release.⁷¹ There is also no ability to order an offender to make restitution, surrender firearms, have no contact with the victim, or complete a treatment program.⁷² Thus, perpetrators of military sexual harassment and assault are not channeled into valuable rehabilitative treatment or subject to oversight or monitoring following their sentence, making it more likely that they will reoffend.

D. The United States Denies Survivors Meaningful Access to Remedies in Civilian Courts.

20. The military criminal legal system remains a closed one, and in practice, many survivors lack meaningful access to redress from civilian courts. Since 2015, the military has been required to consult with victims of sexual assault regarding their preference of whether their perpetrator is prosecuted by a civilian or military court.⁶⁹ After a 2019 DoD audit revealed that 94% of cases reviewed had no record of the victim’s preferences, Congress enacted a requirement that the military document and maintain records of victims’ preferences.⁷⁰ Military procedures now require the convening authority to solicit and document the victim’s preference and, if the victim expresses a preference for civilian court, notify the civilian authorities.⁷¹ However, there are no requirements that the consultation into victims’ preferences will be meaningful, that victims be fully informed of the advantages and disadvantages of each legal system, or that the military follow up with civilian authorities to learn of their decision about whether to prosecute. Additionally, nothing prevents the military from talking the victim out of pursuing civil prosecution. Consequently, military sexual assault survivors are not given the same access to civilian criminal courts that is afforded to non-military survivors.
21. The United States also denies service members who experience sexual violence access to the civil remedies that are available to civilian survivors.⁷² In particular, a legal doctrine established by the United States Supreme Court in its decision in *Feres v. United States* (known as the “Feres doctrine”) provides that military service members may not pursue a tort action against the United States for injuries or civil rights violations “where the injuries arise out of or are in the course of activity that is incident to [military] service.”⁷³ This doctrine has blocked service members from suing the military in civil courts for a wide range of injuries, including sexual misconduct. Most federal appeals courts that have considered the application of *Feres* to military sexual assault cases have found that sexual assault or misconduct that happens during a servicemember’s time in the military is “incident to military service” and that, as a result, survivors have no access to civil remedies.⁷⁴ These barriers to civilian courts coupled with low prosecution rates and the multiple systemic problems with the military legal system that are discussed above mean that many survivors of sexual violence are left without an avenue to seek justice and are denied access to a meaningful remedy.

E. The United States Has Failed to Adequately Address Retaliation.

22. Retaliation against service members who report sexual violence also remains a pervasive issue in the military.⁷⁵ Among service women who reported unwanted sexual contact in FY23, 62% reported perceiving at least one retaliatory behavior associated with their report.⁷⁶ Retaliation against service members who report sexual violence includes threats to safety and life, physical assault, ostracism, and harassment, as well as various forms of professional retaliation, including “lost promotions or opportunities to train, loss of awards, lost privileges, demotions, a change in job duties, disciplinary actions, mental health referrals, and administrative discharge.”⁷⁷ These multiple forms of retaliation further contribute to the military’s toxic climate and deter service members from reporting sexual harassment and violence.
23. Although military law recognizes a criminal offense of retaliation, which is now investigated and prosecuted by the Offices of the Special Trial Counsel, very few incidents of retaliation are reported, let alone investigated or referred for prosecution. Proving retaliation is difficult, due to a high burden of proof on survivors and mismatches between survivors’ experiences of retaliation and the narrower scope of the criminalized offense.⁷⁸ In FY23, the military received 72 reports of retaliation by service members and of these reports opened only 14 investigations.⁷⁹ Of the 8 investigations that the military completed in FY23, it did not take administrative or legal action against the alleged retaliator in any of these cases.⁸⁰ Over the past three years, only one report of retaliation, in FY22, was referred for prosecution.⁸¹ This low rate of action harms survivors of military sexual assault and may act as a deterrent to survivors who are considering reporting their experiences.
24. Additionally, there are still circumstances in which commanders retain the authority to make decisions regarding whether to take punitive action against military sexual assault survivors for their “collateral misconduct” under the military’s “Safe-to-Report Policy.”⁸² The policy is designed to encourage survivors of military sexual assault to report incidents without fear of being charged for minor infractions committed at the time of the assault, such as underage drinking or curfew violation, potentially as a form of retaliation.⁸³ Although special trial counsel may exercise authority over allegations of collateral misconduct by a survivor, when special trial counsel do not exercise authority over the alleged collateral misconduct, the determination as to whether the conduct is “minor” or “non-minor,”⁸⁴ and thus whether the reporter can face discipline, is left to the commander.⁸⁵ Just as commanders are unsuited to handle sexual violence cases, they are not positioned to address retaliation against survivors under their command in an independent and effective manner. While the “Safe-to-Report Policy” has a promising premise, survivors may remain deterred from reporting until the process is fully removed from the chain of command.

F. The United States Denies Survivors Access to Adequate Care and Support.

25. The United States also fails to afford survivors of military sexual violence or discriminatory practices access to adequate care and support. Service members who experience sexual harassment or discrimination do not have adequate access to mental

health support. Service members may be dissuaded from seeking support by fear of stigma and lack of psychotherapist-patient confidentiality. In situations where a DoD medical care provider suspects a patient creates a risk to the military mission or is otherwise unable to perform their assigned duties, the provider must notify the patient's commander, thereby revealing confidential medical information to a patient's superiors.⁸⁶ Although DoD recently implemented the Brandon Act, a law that creates a system through which service members can seek mental health care, this system still creates roadblocks which may prevent survivors of sexual harassment and assault from seeking mental health care. Service members who wish to enact the Brandon Act must first speak to a commander who, although not the service member's direct supervisor, still holds a position of authority within the chain of command.⁸⁷ This may create hesitancy among survivors who fear that revealing mental health struggles after a sexual assault will subject them to retaliation. This fear adds to the already present stigma of seeking mental health care in the military.⁸⁸

26. There are also insufficient mental health care services available to survivors, both current service members and Veterans. Trips to DoD medical centers can create secondary victimization for survivors, particularly because there is a lack of separate waiting areas and female medical staff available, meaning that many female survivors must interact with male healthcare providers and others who may remind survivors of their perpetrators.⁸⁹ DoD convalescent leave also precludes support for victims of sexual harassment. Currently, DoD convalescent leave policy only provides leave for survivors of sexual assault, not sexual harassment.⁹⁰ This means that service members who experience sexual harassment, as opposed to physical sexual assault, are not given adequate resources. Veterans who survived sexual harassment and assault in the military also experience a lack of sufficient mental health care. Military Sexual Trauma (MST) is not included in the Veterans Affairs' (VA) suicide risk detection algorithm, despite the clear connection between MST and suicidal risk.⁹¹ MST in general is underreported among female Veterans, despite high levels of MST in this population.⁹² One survey determined that 68.7% of a sample of Veterans screened positive for MST during the study, but only 36.5% of the sample had ever received a positive MST screen at the Veterans Health Administration.⁹³ As the Trump Administration plans to cut 83,000 VA employees, these already inadequate resources are less likely to be addressed or resolved.⁹⁴

II. LEGAL FRAMEWORK

27. The United States' systematic failure to adequately prevent and respond to sexual violence and discrimination violates numerous human rights obligations, including under the Universal Declaration of Human Rights, the foundational document of the UN human rights system;⁹⁵ the International Covenant on Civil and Political Rights, the UN Convention Against Torture, and the Convention on the Elimination of Racial Discrimination – treaties that the U.S. has ratified;⁹⁶ and the Convention on the Elimination of All Forms of Discrimination Against Women and International Covenant on Economic, Social, and Cultural Rights (ICESCR) – treaties that the U.S. has not ratified but has signed, which obliges it not to take any actions that would undermine their object and purpose.⁹⁷
28. Many human rights bodies and experts, including the U.N. Special Rapporteur on Violence Against Women,⁹⁸ the U.N. Committee Against Torture,⁹⁹ the U.N. Human Rights Committee,¹⁰⁰ and the Inter-American Commission on Human Rights,¹⁰¹ have expressed concern about sexual violence in the U.S. military and recognized that it implicates the United States' human rights obligations.
29. At the UN Human Rights Council's 2015 Universal Periodic Review of the U.S., two states, Slovenia and Denmark, recommended that the United States increase its efforts to prevent and respond to sexual violence in the U.S. military.¹⁰² More recently, at the U.N. Human Rights Council's 2020 UPR of the United States, Israel recommended that the U.S. take further action to address military sexual violence.¹⁰³

III. SUGGESTED RECOMMENDATIONS

30. In response to these ongoing human rights issues, the U.S. should be called upon to:
- a. Engage in a robust and sustained effort involving leadership at all levels to dismantle the misogynistic and toxic military subcultures that foster sexual harassment and discrimination, including through education, accountability, and the development and implementation of meaningful outcome metrics.
 - b. Protect the rights of transgender individuals to serve in the military and access gender-affirming healthcare. Codify these rights in legislation. Withdraw all executive orders and policies that deny these rights to transgender individuals.
 - c. Repeal federal bans on programs and strategies that combat discrimination and promote diversity, equity, and inclusion within the military. Address the intersection of discrimination and violence within sexual assault prevention and response programs.
 - d. Track the impact of military sexual harassment on LGBTQ+ and racial and ethnic minority service members through annual DoD reports and by providing access to data on the intersection of race, sexual orientation, and gender identity, and military sexual assault.

- e. Ensure that military sexual assault prevention programs and strategies are not paused or terminated. Effectively implement constructive, scientifically informed prevention strategies through training, hiring, or other measures.
- f. Ensure that the Offices of the Special Trial Counsel have the resources, training, and independence needed to be successful. Build a professionalized military legal/judicial staff with the knowledge, specialization, and training to prosecute, defend, and adjudicate sexual offense cases effectively.
- g. Reform other aspects of the military criminal legal system, including by expanding sentencing options to provide for offender rehabilitation and reduce recidivism.
- h. Judicially or legislatively overturn or modify legal doctrines, including the *Feres* doctrine, that exclude military victims of sexual violence from judicial remedies that are available to civilians.
- i. Take meaningful action to prevent retaliation against survivors who report and ensure accountability when retaliation occurs. Move the authority to address retaliation complaints that do not amount to a covered criminal offense and any alleged “collateral misconduct” from command to independent authorities.
- j. Improve access to mental health care after sexual harassment and assault, including amending convalescent leave policy to include leave for sexual harassment. Ensure that survivors who experience PTSD related to military sexual violence have meaningful access to the treatment and support they need.

Endnotes

¹ INDEPENDENT REVIEW COMMISSION ON SEXUAL ASSAULT IN THE MILITARY, *HARD TRUTHS AND THE DUTY TO CHANGE* 30 (2022), <https://media.defense.gov/2021/Jul/02/2002755437/-1/-1/0/IRC-FULL-REPORTFINAL-1923-7-1-21.PDF/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF> [hereinafter IRC REPORT].

² *Prioritizing Military Excellence and Readiness*, Exec. Order No. 14183, 90 FR 8757 (Jan. 27, 2025), <https://www.federalregister.gov/d/2025-02178>.

³ *Restoring America's Fighting Force*, Exec. Order No. 14185, 90 FR 8763 (Jan. 27, 2025), <https://www.federalregister.gov/d/2025-02181>; see also Secretary of Defense, Pete Hegseth, *Memorandum For Senior Pentagon Leadership Commanders Of The Combatant Commands Defense Agency And Dod Field Activity Directors* (Jan. 29, 2025), <https://media.defense.gov/2025/Jan/29/2003634987/-1/-1/1/RESTORING-AMERICAS-FIGHTING-FORCE.PDF>.

⁴ See Steve Beynon, Drew F. Lawrence & Konstantin Toropin, *Thousands of Women Serve in Combat Roles. Pentagon Nominee Hegseth Says They Shouldn't*, MILITARY NEWS (Nov. 18, 2024), <https://www.military.com/daily-news/2024/11/18/thousands-of-women-serve-combat-roles-pentagon-nominee-hegseth-says-they-shouldnt.html>; see also Steve Walsh, *Pete Hegseth's views about women and military standards*, NPR (Jan. 22, 2025, 6:38PM), <https://www.npr.org/2025/01/22/nx-s1-5269824/pete-hegseths-views-about-women-and-military-standards>; Julie Tsirkin, Sarah Fitzpatrick & Courtney Kube, *Senators receive affidavit containing new allegations against Pete Hegseth, who denies the claims*, NBC NEWS (Jan. 21, 2025, 1:51PM) <https://www.nbcnews.com/politics/national-security/senators-received-affidavit-containing-new-allegations-pete-hegseth-de-rcna188342>; Bill Chappell, *Defense pick Peter Hegseth paid accuser to protect his career, his lawyer confirms*, NPR (November 18, 2024), <https://www.npr.org/2024/11/18/g-s1-34704/pete-hegseth-paid-accuser-career-scrutiny-defense>.

⁵ DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY 4–5 (2023), https://www.sapr.mil/sites/default/files/public/docs/reports/AR/FY23/FY23_Annual_Report.pdf [hereinafter DOD, ANNUAL REPORT 2023].

⁶ Jennifer Greenburg, *Deserted: The U.S. Military's Sexual Assault Crisis as a Cost of War*, BROWN UNIVERSITY WATSON INSTITUTE 37 (Aug. 14, 2024) (explaining that the range of two to four times higher is an average based on rounded ratios of independent studies of the past few years), [hereinafter Greenburg, *Brown University Report*], https://home.watson.brown.edu/sites/default/files/Research/Research%20Briefs/2024/8.14.24%20Greenburg_Sexual%20Assault%20Crisis_Costs%20of%20War.pdf; see *id.*, Appendix B (figure 5) of the report; see also Jonathan Lehrfeld, *Military sexual assault rate higher than DOD estimates, report finds*, MILITARY TIMES (Aug. 19, 2024), <https://www.militarytimes.com/news/your-military/2024/08/19/military-sexual-assault-rate-higher-than-dod-estimates-report-finds/>.

⁷ Memorandum from Secretary of Defense Lloyd J. Austin, *Immediate Actions to Counter Sexual Assault and Harassment and the Establishment of a 90-Day Independent Review Commission on Sexual Assault in the Military*, (Feb. 26, 2021), [hereinafter *Austin Memorandum*] <https://media.defense.gov/2021/Feb/26/2002590163/-1/-1/0/APPROVAL-OF-MEMO-DIRECTING-IMMEDIATE-ACTIONS-TO-COUNTER-SEXUAL-ASSAULT-AND-HARASSMENT.PDF>; see also U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2021 7 (2022), https://www.sapr.mil/sites/default/files/public/docs/reports/FY21_Annual_Report.pdf [hereinafter 2021 SAPR REPORT].

⁸ *Austin Memorandum*, *supra* note 7.

⁹ IRC REPORT, *supra* note 1, at 10.

¹⁰ *Id.* at 21.

¹¹ *Id.* at 6–7.

¹² See Uniform Code of Military Justice, 10 U.S.C. § 801(17).

¹³ IRC REPORT, *supra* note 1, at 21–22; see also *infra*, § I(A).

¹⁴ See C. Todd Lopez, *DoD Takes Phased Approach to Implementing Recommendations on Sexual Assault, Harassment*, DEPARTMENT OF DEFENSE (July 21, 2021), <https://www.defense.gov/News/News-Stories/Article/Article/dod-takes-phased-approach-to-implementing-recommendations-on-sexual-assault-har> (describing the department's plan to review recommendations and implement them); see also Meghann Myers, *Military Sexual Assault Reform Is Slow Going, But That's The Plan*, MILITARY TIMES (Sep. 21, 2022), <https://www.militarytimes.com/news/your-military/2022/09/21/military-sexual-assault-reform-is-slow-going-but-thats-the-plan> (stating that the Department intends to have reforms fully implemented by 2028).

¹⁵ *Prioritizing Military Excellence and Readiness*, Exec. Order No. 14183, 90 FR 8757 (Jan. 27, 2025), <https://www.federalregister.gov/d/2025-02178>.

¹⁶ IRC REPORT, *supra* note 1, at 9–10.

¹⁷ See, e.g., Terry L. Schell et al., *The Relationship Between Sexual Assault and Sexual Harassment in the U.S. Military*, RAND CORPORATION (March 2, 2021), https://www.rand.org/pubs/research_reports/RR3162.html; IRC REPORT, *supra* note 1, at 5 (“In the IRC’s discussions with enlisted personnel, many Service women described feeling singled out or the subject of near daily sexist comments, as one of few women in their units.”); see also *id.* at 29 (“Across the force, sexual violence is an outgrowth of lingering “subcultures of misogyny,” as recently described by the Commandant of the Marine Corps. These subcultures don’t only exist in real life— they also thrive online.”); Erica Dorn et al., Case 15.124, Final Observations on the Merits of the Case, Int. Am. Comm. H.R. (May 14, 2023) at 1 (“Petitioners were called derogatory names like ‘beauty queen,’ ‘bitch,’ ‘whore,’ ‘slut,’ ‘skank,’ and ‘Walking Mattress.’”); *id.* at 6 (“The harassers would, among other things, watch pornography around her and make comments to her about things she should wear or sexual acts she should ‘try,’ talk in front of her and to her in a sexual manner, walk around naked in a tent while she was present, call her names such as ‘Bitch’ and ‘Beauty Queen.’”).

¹⁸ Johnny Diaz et al., *What to Know About the Death of Vanessa Guillén*, N.Y. TIMES (Nov. 20, 2022), <https://www.nytimes.com/article/vanessa-guillen-fort-hood.html>.

¹⁹ Margaret Seymour and Caitlin Crockett, *Confronting Digital Misogyny: Why the Military’s #MeToo Moment Must Tackle Cyberharassment*, CNAS (Sept. 9, 2020), <https://www.cnas.org/publications/commentary/confronting-digital-misogyny-why-the-militarys-metoo-moment-must-tackle-cyberharassment>

²⁰ IRC REPORT, *supra* note 1, at 36.

²¹ *Id.* at 10.

²² DEPARTMENT OF DEFENSE: OFFICE OF PEOPLE ANALYTICS, 2023 WORKPLACE AND GENDER RELATIONS SURVEY OF MILITARY MEMBERS OVERVIEW REPORT (2023), https://www.sapr.mil/sites/default/files/public/docs/reports/AR/FY23/FY23_Annex_1.pdf [hereinafter OPA, WORKPLACE AND GENDER REPORT 2023].

²³ *Id.* at 10.

²⁴ *Id.* at 35; DoD FY2023; see also *infra* § I(D).

²⁵ IRC REPORT, *supra* note 1, at 10.

²⁶ *Id.*, 2021 SAPR REPORT, *supra* note 7, at 14.

²⁷ Greenburg, *Brown University Report*, *supra* note 6, at 20.

²⁸ OPA, WORKPLACE AND GENDER REPORT 2023, *supra* note 22, at 10.

²⁹ DoD, ANNUAL REPORT 2023, *supra* note 5, at 3-4; See Tom Vanden Brook, *Military sexual assaults decline for first time in almost a decade, statistics show*, USA TODAY: POLITICS (May 16, 2024) (quoting former Air Force Chief Prosecutor Don Christensen’s comment that “while we can celebrate the improvements, the numbers are still too high . . . 29,000 service members who have been victims of unwanted sexual violence are still far too many.”), <https://www.usatoday.com/story/news/politics/2024/05/16/us-military-sexual-assault-reports-decline/73713414007/>.

³⁰ See Joie D. Acosta, Matthew Chinman, & Amy L. Shearer, *Countering Sexual Assault And Sexual Harassment in The U.S. Military*, RAND CORPORATION (2021) at 6-7,

https://www.rand.org/pubs/research_reports/RRA1318-1.html; see also IRC REPORT, *supra* note 1, at 26 (noting that the military regularly conflates awareness-raising with prevention, offering activities like pancake breakfasts, dance contests, and golf tournaments that trivialize the seriousness of the issue and alienate survivors).

³¹ IRC REPORT, *supra* note 1, at 30; see also Haley Britzky, *Stop the social experiment’—New Survey Spotlights Bias Against Women in Army Special Ops. Task and Purpose* (May 18, 2021),

<https://taskandpurpose.com/news/army-special-operations-women-survey/>; *A Unit Guide to Combating Gender Discrimination in the Army*, THE COMPANY LEADER (Nov. 11, 2020), <https://companyleader.themilitaryleader.com/2020/11/07/athena-thriving-gender-discrimination/>.

³² IRC REPORT, *supra* note 1, at 30 (noting that the military’s “subcultures of misogyny” that include “harmful beliefs and attitudes on race, ethnicity, sexual orientation [and] gender identity” perpetuates sexual harassment and assault).

³³ OPA, WORKPLACE AND GENDER REPORT 2023, *supra* note 22, at x-xi.

³⁴ Natasha A. Shvey et al., *Stigma, Health, and Psychosocial Functioning Among Transgender Active Duty Service Members in the U.S. Military*, 5(2) STIGMA AND HEALTH 188, 192 (2020).

³⁵ IRC REPORT, *supra* note 1, at App. D: The Imperative of Leadership in the War Against Sexual Assault: Recommendations for Climate & Culture 13; see also 2017 Workplace and Equal Opportunity Survey of Active Duty Members: Executive Report. Report No. 2018-023. Alexandria, VA: Office of People Analytics.

<https://taskandpurpose.com/app/uploads/2021/01/27/2017-Workplace-and-Equal-Opportunity-SurveyReport.pdf>.

³⁶ See IRC REPORT, *supra* note 1, at 21; Ashley C. Schuyler et al., *Experiences of Sexual Harassment, Stalking, and Sexual Assault During Military Service Among LGBT and Non-LGBT Service Members*, 33 J. TRAUMATIC STRESS

257, 263 (2020), <https://onlinelibrary.wiley.com/doi/10.1002/jts.22506>.

³⁷ IRC REPORT, *supra* note 1, at 11.

³⁸ See, e.g., IRC REPORT, *supra* note 1, at 5-6 and App. C: Equipping the Force and Empowering Prevention: Recommendations to Prevent Sexual Harassment and Sexual Assault in the U.S. Military, at 48.

³⁹ See IRC REPORT, *supra* note 1, at 11; see also Morral, A.R., & Schell, T.L., *Sexual Assault of Sexual Minorities in the U.S. Military*, RAND CORPORATION (2021), https://www.rand.org/pubs/research_reports/RRA1390-1.html.

⁴⁰ Morral & Schell, *Sexual Assault of Sexual Minorities in the U.S. Military*, *supra* note 39, at 4.

⁴¹ Greenburg, *Brown University Report*, *supra* note 6, at 21; see also Paula Smith-Benson, *A Systems Thinking Approach to Formulating the Problem of Military Sexual Trauma Among Black Female Veterans*, 93 (PhD diss., Thomas Jefferson University, 2021).

⁴² See DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES, ACADEMIC PROGRAM YEAR 2021–2022, at 9 (2023), https://www.sapr.mil/sites/default/files/public/docs/reports/MSA/DOD_Annual_Report_on_Sexual_Harassment_and_Violence_at_MSAs_APY21-22.pdf

⁴³ See IRC REPORT, *supra* note 1, at App. D: The Imperative of Leadership in the War Against Sexual Assault: Recommendation for Climate & Culture, at 13, citing Mary Delach Leonard, *10 Years Later, a Soldier's Family Still Grieves and Questions the Army's Version of her Death*. St. Louis Public Radio, NPR: ST. LOUIS PUBLIC RADIO (July 19, 2015), <https://news.stlpublicradio.org/government-politics-issues/2015-07-19/10-years-later-a-soldiers-family-still-grieves-and-questions-the-armys-version-of-her-death>.

⁴⁴ See *id.*

⁴⁵ IRC REPORT, *supra* note 1, at App. D: The Imperative of Leadership in the War Against Sexual Assault: Recommendation for Climate & Culture, at 12–13; THE INSPECTOR GENERAL DEPARTMENT OF THE AIR FORCE, REPORT OF INQUIRY (S8918P) 4 (2020) (finding that one out of every five Black Air Force military members “do not trust their chain of command.”).

⁴⁶ *Restoring America's Fighting Force*, Exec. Order No. 14185, 90 FR 8763 (Jan. 27, 2025), <https://www.federalregister.gov/d/2025-02181>; see also Secretary of Defense, Pete Hegseth, *Memorandum For Senior Pentagon Leadership Commanders Of The Combatant Commands Defense Agency And Dod Field Activity Directors* (Jan. 29, 2025), <https://media.defense.gov/2025/Jan/29/2003634987/-1/-1/1/RESTORING-AMERICAS-FIGHTING-FORCE.PDF>.

⁴⁷ James Queally and Sonja Sharp, *Military Freezes Sexual Assault Prevention After Trump Executive Order on DEI*, LOS ANGELES TIMES (Feb. 8, 2025), <https://www.latimes.com/california/story/2025-02-07/military-freezes-all-sex-assault-training-in-response-to-trump-executive-order>

⁴⁸ *Id.*; Protect Our Defenders, *Statement: Sexual Assault Prevention Programs Slashed as Military Faces Recruitment Shortfall* (Jan. 30, 2025), <https://www.protectourdefenders.com/statement-sexual-assault-prevention-programs-slashed-as-military-faces-recruitment-shortfall-updated/>.

⁴⁹ *Prioritizing Military Excellence and Readiness*, Exec. Order No. 14183, 90 FR 8757 (Jan. 27, 2025), <https://www.federalregister.gov/d/2025-02178>.

⁵⁰ See *id.*; see also DOD: *Gender Dysphoria Incompatible With Military, Service Members Must Serve in Accordance With Sex*, DOD: NEWS (Feb. 28, 2025), <https://www.defense.gov/News/News-Stories/Article/Article/4086111/dod-gender-dysphoria-incompatible-with-military-service-members-must-serve-in-a/>.

⁵¹ DoD Policy Memo, *Service Members and Applicants Who Have a Current Diagnosis or History of, or Exhibit Symptoms Consistent with, Gender Dysphoria* §1(d) (Feb. 26, 2025), <https://htv-prod-media.s3.amazonaws.com/files/gov-uscourts-dcd-276845-63-1-67c07aa42578d.pdf>

⁵² Haley Britzky, *Pentagon Plans to Remove Transgender Service Members Under New Policy*, CNN (Feb. 27, 2025), <https://www.cnn.com/2025/02/26/politics/pentagon-remove-transgender-service-members-new-policy/index.html>.

⁵³ *Id.*; Rebecca Kheel, “Complete Purge”: On Paper Exemptions to Transgender Troop Ban are Worthless, *Advocates Say*, MILITARY.COM (Feb. 27, 2025), <https://www.military.com/daily-news/2025/02/27/complete-purge-paper-exemptions-transgender-troop-ban-are-worthless-advocates-say.html>. DoD Policy Memo, *supra* note 51 §§ 4.1(c), 4.3(c) (Feb. 26, 2025) (providing for a waiver on a case-by-case basis only if a transgender individual who seeks to enlist directly supports warfighting activities or an existing service member who has been diagnosed with gender dysphoria can prove that they support a specific warfighting need, never transitioned to the gender they identify with, and can prove that they are stable in their biological sex over 36 months without clinically significant distress – and adheres to the “standards for their biological sex.”).

⁵⁴ See Christopher Wiggins, *Transgender vets deserve access to gender-affirming care, Veterans Affairs providers say (exclusive)*, ADVOCATE (Mar. 20, 2025), <https://www.advocate.com/news/transgender-vets-providers-worried->

va; see also Roni Caryn Rabin, Citing Trump's Order, *V.A. Halts Most Transgender Care*, N.Y. TIMES (Mar. 17, 2025), <https://www.nytimes.com/2025/03/17/health/veterans-transgender-health-care.html?searchResultPosition=56>.

⁵⁵ Amnesty International, *Executive Orders Attacking Transgender People Cause Harm, Violate Human Rights* (Jan. 28, 2025), <https://www.amnestyusa.org/press-releases/executive-orders-attacking-transgender-people-cause-harm-undermine-human-rights/>.

⁵⁶ See Dave Philipps, *Judge Blocks Policy That Would Expel Transgender Troops*, N.Y. TIMES (Mar. 18, 2025), <https://www.nytimes.com/2025/03/18/us/transgender-troops-military-injunction.html>; see also, Kyle Cheney, *Another judge blocks Trump effort to ban transgender troops from the military*, POLITICO (Mar. 27, 2025, 10:27PM), <https://www.politico.com/news/2025/03/27/transgender-military-ban-ruling-00256107>.

⁵⁷ DoD, ANNUAL REPORT 2023, *supra* note 5, at 19.

⁵⁸ *Id.* at 20.

⁵⁹ *Unrestricted Reporting*, DoD Sexual Assault Prevention and Result (2023), <https://sapr.mil/unrestricted-reporting> (last visited Mar. 3, 2025).

⁶⁰ DoD, ANNUAL REPORT 2023, APPENDIX B, *supra* note 5, at 19, 23.

⁶¹ *Id.* at 11; IRC REPORT, *supra* note 1, at 10.

⁶² Natalie Schachar, *Sexual assault cases are formally removed from the U.S. military chain of Command National Public Radio* (Jan. 4, 2024), <https://www.npr.org/2023/12/28/1222057516/military-sexual-assault-cases-move>.

⁶³ *Id.*

⁶⁴ See Secretary of Defense Pete Hegseth Statement on General Officer Nominations, PRESS RELEASE: U.S. DEPARTMENT OF DEFENSE (Feb. 21, 2025), <https://www.defense.gov/News/Releases/Release/Article/4074482/secretary-of-defense-pete-hegseth-statement-on-general-officer-nominations/>; see also Thomas Novelly & Konstantin Toropin, *'People Are Very Scared': Trump Administration Purge of JAG Officers Raises Legal, Ethical Fears*, MILITARY.COM (Feb. 24, 2025), <https://www.military.com/daily-news/2025/02/24/people-are-very-scared-trump-administration-purge-of-jag-officers-raises-legal-ethical-fears.html>

⁶⁵ Oren Liebermann & Haley Britzky, *Trump administration fires top US general and Navy chief in unprecedented purge of military leadership*, CNN (Feb. 21, 2025, 9:41PM), <https://www.cnn.com/2025/02/21/politics/trump-fires-top-us-general-cq-brown/index.html>; see also Lolita C. Baldor, *Former Defense Chiefs Call for Congressional Hearings on Trump's Firing of Senior Military Leaders*, MILITARY.COM (Feb. 27, 2025), <https://www.military.com/daily-news/2025/02/27/former-defense-chiefs-call-congressional-hearings-trumps-firing-of-senior-military-leaders.html>.

⁶⁶ IRC Report, *supra* note at 1, at 38.

⁶⁷ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, MILITARY JUSTICE: ACTIONS NEEDED TO HELP ENSURE SUCCESS OF JUDGE ADVOCATE CAREER REFORMS 38 (2024); see also *id.* at 27 (noting that senior military officials expressed concern that while the Offices of the Special Trial Counsel require its legal staff to have at least 2-4 years of litigation experience, there are no similar requirements for defense counsel, creating a likely imbalance in experience between prosecution and defense).

⁶⁸ Col. Don Christensen (ret.), Expert Declaration, May 3, 2023, Exhibit E in Erica Dorn et al., Case 15.124, Final Observations on the Merits of the Case, Int. Am. Comm. H.R. (May 14, 2023).

⁶⁹ National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 534(b)(1)-(2), 128 Stat. 3292, 3367 (2014).

⁷⁰ INSPECTOR GENERAL, U.S. DEPARTMENT OF DEFENSE, REPORT NO. DODIG-2019-064, AUDIT OF DoD EFFORTS TO CONSULT WITH VICTIMS OF SEXUAL ASSAULT COMMITTED BY MIL. PERSONNEL IN THE U.S. REGARDING THE VICTIM'S PREFERENCE FOR PROSECUTION 8-9 (2019), <https://media.defense.gov/2019/Mar/22/2002104649/-1/-1/1/DODIG-2019-064.PDF>; National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 538(b), 113 Stat. 1198, 1363-64 (2019).

⁷¹ DoD INSTRUCTION 1030.02, VICTIM AND WITNESS ASSISTANCE § 3.2(i) (July 2023).

⁷² See Dwight Stirling, *Ending Sexual Assault Requires Civil Action*, CENTER FOR LAW AND MILITARY POLICY (Mar. 26, 2019), <https://centerforlaw.org/sound-off/f/ending-mst-requires-a-civil-solution-by-dwight-stirling>.

⁷³ *Feres v. United States*, 340 U.S. 135, 146 (1950).

⁷⁴ See *Doe v. United States*, 815 Fed. Appx. 592, 595 (2d Cir. 2020); *Doe v. Hagenbeck*, 870 F.3d 36, 45 (2d Cir. 2017), cert. denied, 141 S. Ct. 1498 (2021); *Klay v. Panetta*, No. 13-5081 (D.C. Cir. 2014); *Cioca v. Rumsfeld*, 720 F. 3d 505 (4th Cir. 2013). But see *Spletstoser v. Hyten*, 33 F.4th 938, 958 (9th Cir. 2022) (rejecting government's argument that case alleging military sexual assault and retaliation should be dismissed under *Feres* and finding it implausible for sexual assault to be considered "incident to military service").

⁷⁵ IRC REPORT, *supra* note 1, at 10 (noting that “the decision to report an assault or harassment is compounded by

the very real fear of retaliation, reprisal, and being ostracized from their unit/family”).

⁷⁶ DoD, ANNUAL REPORT 2023, *supra* note 5, at App. C, Metrics and Non-Metrics 14.

⁷⁷ HUMAN RIGHTS WATCH, *EMBATTLED: Retaliation Against Sexual Assault Survivors In The U.S. Military* (2015) at 36, <https://www.hrw.org/report/2015/05/18/embattled/retaliation-against-sexual-assault-survivors-us-military>.

⁷⁸ DoD, ANNUAL REPORT 2023, *supra* note 5, at App. C, Metrics and Non-Metrics 14 (noting that despite 62% of female reporters perceiving negative retaliatory behavior in FY23, only 26% reports constituted negative behavior prohibited by military law”).

⁷⁹ DoD, ANNUAL REPORT 2023, *supra* note 5, at App. B, Statistical Data on Sexual Assault 43.

⁸⁰ *Id.*

⁸¹ *Id.*; U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY FISCAL YEAR 2022, App.B, Statistical Data on Sexual Assault 43 (2023); U.S. DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY FISCAL YEAR 2021, App. B, Statistical Data on Sexual Assault 42 (2022).

⁸² DEPARTMENT SAFE-TO-REPORT POLICY & ROLE OF OSTC 2 (2024), Department of Defense Sexual Assault Prevention and Response office, https://www.sapr.mil/sites/default/files/public/docs/policy/DSD_Memo_Topic_Sheet_Safe_To_Report_OSTCs_Reference_Copy.pdf [hereinafter Safe-to-Report Policy].

⁸³ *Id.* at 1.

⁸⁴ *Id.* at 2.

⁸⁵ *Id.* at 3.

⁸⁶ See Meghan Quinn & Sean Wilkes, *Military Medical Ethics: Privacy, Military Necessity, and the Dual Roles of Military Psychiatrists*, 15 AM. J. PSYCHIATRY RESIDENTS 12 (2020), <https://psychiatryonline.org/doi/epdf/10.1176/appi.ajp-rj.2020.150408>.

⁸⁷ See Military Health System, *Brandon Act Fact Sheet*, <https://www.health.mil/Reference-Center/Fact-Sheets/2023/05/05/Brandon-Act-Fact-Sheet>.

⁸⁸ See Julia Rollison, *Ease the Path to Mental Health Care After Military Sexual Trauma*, MILITARY TIMES (Feb. 14, 2023), <https://www.rand.org/pubs/commentary/2023/02/preventing-military-sexual-assault-is-important-so.html>; see also A. Ganz et al., *Military Culture and Its Impact on Mental Health and Stigma*, 13 J. COMMUNITY ENGAGEMENT & SCHOLARSHIP (2021), <https://jces.ua.edu/articles/64/files/62e2acf099965.pdf>.

⁸⁹ See Sacha A. McBain et al., *The Relationship Between Provider Gender Preferences and Perceptions of Providers Among Veterans Who Experienced Military Trauma*, 37 J. INTERPERSONAL VIOLENCE 2868, 2881 (2020), <https://journals.sagepub.com/doi/10.1177/0886260520944536>; see also Lindsey L. Monteith et al., *Military Sexual Trauma Survivors’ Perceptions of Veterans Health Administration Care: A Qualitative Examination*, 17 PSYCHOLOGICAL SERVICES 178, 183 (2020), <https://pubmed.ncbi.nlm.nih.gov/30265071/>.

⁹⁰ Memorandum from the Office of the Assistant Secretary of Defense on Clarification of Convalescent Leave Policy for Service Members Recovering from Sexual Assault (Oct. 20, 2022), https://www.sapr.mil/sites/default/files/public/docs/policy/Clarification_of_Convalescent_Leave_Policy_20Oct2022.pdf.

⁹¹ Anne Marshall-Chalmers, *‘Invisible’—More Women Veterans Are Dying of Suicide and VA Still Lacks Resources, Advocates Say*, THE WAR HORSE (Apr. 25, 2024), https://thewarhorse.org/as-more-women-veterans-die-by-suicide-va-lacks-support/?fbclid=IwY2xjawFVFmZleHRuA2FlbQlXMQABHV8ANS3ayeE4hZpuLF4UrNENSrqnJXO0qZJjKPX8rXpDUfZVNTBBWZunA_aem_ahCAAeXHKZdJvNSfzrLmtQ; DISABLED AMERICAN VETERANS, WOMEN VETERANS: THE JOURNEY TO MENTAL WELLNESS 13 (2024), <https://www.dav.org/wp-content/uploads/Women-Veterans-Study-2024.pdf>.

⁹² Lindsey L. Monteith, *Military Sexual Trauma Among Women Veterans Using Veterans Health Administration Reproductive Health Care: Screening Challenges and Associations with Post-Military Suicidal Ideation and Suicide Attempts*, 38 J. INTERPERSONAL VIOLENCE 7578, 7590 (2023) <https://journals.sagepub.com/doi/epdf/10.1177/08862605221145725>.

⁹³ *Id.* at 7587.

⁹⁴ Rebecca Kheel, *83,000 VA Employees Slated to be fired this year by Musk’s DOGE, memo says*, MILITARY.COM (March 5, 2025), <https://www.military.com/daily-news/2025/03/05/va-plans-fire-83000-employees-musks-help-eliminating-pact-act-staffing-increase.html>.

⁹⁵ Universal Declaration of Human Rights (“UDHR”), G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

⁹⁶ International Covenant on Civil and Political Rights (“ICCPR”) *ratified* Jun. 8, 1992, 999 U.N.T.S. 171; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), *ratified*

Oct. 21, 1994, 1465 UNTS 85; International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), *ratified* Oct. 21, 1994, 660 UNTS 195.

⁹⁷ Convention on the Elimination of all Forms of Discrimination Against Women (“CEDAW”), *signed* Jul. 17, 1980, 1249 U.N.T.S. 13; International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), *signed* Oct. 05, 1977, 993 U.N.T.S. 3.

⁹⁸ See UN Human Rights Council, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Rashida Manjoo - Addendum - Mission to the United States of America, ¶ 22-33, A/HRC/17/26/Add.5 (June 6, 2011).

⁹⁹ See Committee Against Torture, Concluding Observations on the Third to Fifth Periodic Reports of the United States of America, ¶ 30, CAT/C/USA/CO/3-5 (Dec. 19, 2014).

¹⁰⁰ See U.N. Human Rights Committee, Concluding Observations on the Fifth Periodic Report of the United States of America ¶ 20-21 (Dec. 7, 2023), UN Doc. CCPR/C/USA/CO/5.

¹⁰¹ In 2022, the Inter-American Commission on Human Rights (IACHR) found admissible two petitions filed against the United States by survivors of military sexual assault. See IACHR, Report No. 238/22, ¶ 58, Petition 106-14. Admissibility. Amber Anderson et al. United States of America. September 9, 2022; IACHR, Report No. 290/22, ¶ 97. Petition 2340-15. Admissibility. Carla Butcher et al. United States of America. November 1, 2022.

¹⁰² U.N. Human Rights Council, Report of the Working Groups on the Universal Periodic Review, 20 July 2015, ¶¶ 176.258, 176.289.

¹⁰³ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, 15 December 2020, ¶ 26.240.