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TITLING, INDEXING, AND DUE PROCESS REFORM.

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9.0—Miscellaneous.

12.0—Military criminal justice.

I. Introduction

Across the Reserve and National Guard, and among servicemembers and veterans generally, one of the most persistent and least understood problems servicemembers face is the Department of Defense’s “titling and indexing” system. Under current Army Criminal Investigations Division (CID), Air Force Office of Special Investigations (OSI), and Naval Criminal Investigation Service (NCIS) investigative regulations, a servicemember’s name is placed into the “subject” block of a Report of Investigation (“ROI”) based solely on “credible information”—a deliberately low threshold far below probable cause and dramatically below proof beyond a reasonable doubt.¹

The Supreme Court has repeatedly emphasized that probable cause is a practical but meaningful constitutional threshold requiring facts sufficient to warrant a reasonable belief that a specific person committed a crime. *See Beck v. Ohio*, 379 U.S. 89, 91 (1964) (probable cause exists where the “facts and circumstances within [the officer’s] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing” an offense was committed); *Brinegar v. United States*, 338 U.S. 160, 175 (1949) (probable cause deals with “probabilities” on which reasonable people act, not suspicion or hunches); *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (adopting the “totality of the circumstances” test); *Maryland v. Pringle*,

540 U.S. 366, 371 (2003) (probable cause requires a reasonable belief that *the particular individual* committed the offense).

By contrast, the Department of Defense’s titling and indexing regime requires the far lesser showing of only “credible information”—defined in DoD Instruction 5505.07 as *information that, considering its source and nature, supports a reasonable belief that an offense may have been committed*—a standard far below probable cause and not requiring individualized suspicion, corroboration, or legal review. See Dep’t of Def. Instr. 5505.07, Titling and Indexing of Subjects of Criminal Investigations, encl. 4 (2018).

In practice, this means a servicemember may be titled and permanently indexed in the Defense Central Index of Investigations (DCII) based on allegations that would fall well short of probable cause, would never justify an arrest, and would not even support a search warrant.

The DCII is the Department of Defense’s permanent, centralized investigative index, maintained by the Defense Counterintelligence and Security Agency (DCSA), containing records of all DoD criminal investigations, counterintelligence inquiries, law-enforcement reports, and titling/indexing entries across Army CID, Air Force OSI, NCIS, and other DoD investigative components. See DoD Manual 5525.07, *Criminal Justice Information Systems*, vol. 2 (2012) (describing DCII as the central DoD repository for investigative and criminal history data used for background checks, clearance adjudication, and suitability determinations). Key features of DCII include:

- Permanent retention: Entries for criminal investigations, including titling entries, are retained for 40 years or longer, even if the allegation is unfounded.
- Enterprise-wide access: Clearance adjudicators, security managers, federal hiring officials, and law enforcement agencies

query DCII during all Tier 3 and Tier 5 (formerly NACL/SSBI) background investigations.

- Not limited to convictions: DCII includes administrative investigative data, including titling entries, even without arrest, charges, or adverse action.
- Triggers adverse clearance consequences: DCII records are often treated as derogatory information and can lead to denials, suspensions, or revocations of security clearances.
- Cross-referenced: DCII pulls indexing data from CID, OSI, NCIS, DCIS, AFOSI, and other DoD investigative units.

Titling therefore triggers lifelong administrative consequences based on a threshold dramatically lower than the constitutional standard required for criminal process, even though titling itself produces effects that frequently exceed those of many criminal dispositions.²

There is no presumption of innocence, no requirement for legal review, and no automatic removal even if the allegation is later disproven. The result is a quasi-criminal mark on a servicemember's federal investigative history that can follow him or her for decades, appearing in background checks, undermining clearance eligibility, and affecting federal employment or credentialing as well as some federal benefits.

Some Reserve Organization of America (ROA) members—many of whom have been titled despite being cleared at courts-martial, through administrative investigations, or by command inquiry—have pushed Congress for over a decade to correct what has become one of the most consequential administrative injustices in the military personnel system.

II. What Titling Is—and Is Not

“Titling” is an administrative indexing action—not a legal, judicial, or prosecutorial determination.³ CID's own regulations emphasize that

titling does not imply guilt, charges, or even a completed investigation. Yet titling produces real-world, career-long consequences:

- Appears in federal background investigations
- Adversely affects security clearance adjudications⁴
- Blocks command selection, career progression, and leadership opportunities
- Surfaces in federal hiring and suitability screens
- Remains indexed for forty years in DCII and CRC databases⁵

Because “credible information” may be speculative, uncorroborated, or later disproven, titling often rests on evidence that would not support probable cause, not support arrest, not support warrantless search, would not support prosecution, and frequently does not even support administrative action.

III. Why Titling Is Nearly Impossible to Undo

Under 32 C.F.R. § 633.12, a servicemember may request amendment of a Report of Investigation or ROI. However, CID investigations are exempt from the Privacy Act’s amendment procedures, meaning ordinary correction rights under 5 U.S.C. § 552a(e)(5) do not apply. Requests for correction are granted only if the servicemember produces “new, relevant, and material” information.⁶

“Untitling” is permitted only in cases of mistaken identity. The decision rests solely with the Commanding General, CID, and is final and unreviewable.⁷ Army legal assistance guidance acknowledges bluntly that titling is “virtually permanent,” even when allegations are unfounded.⁸

IV. Why Congress Must Act

DoD created the very exemptions that shield titling decisions from meaningful review. The structure denies servicemembers the basic due-process protections expected in any administrative system affecting reputation, employment, suitability, fitness, and liberty interests. What began as investigative convenience has evolved into an administrative shadow adjudication with consequences far beyond its intended purpose. It affects:

- Employment and livelihood
- Professional licensing and credentialing
- Security clearance and trustworthiness determinations
- Promotion, command selection, and assignment

competitiveness

These stakes demand legislative intervention.

V. Why Legislative Action Is Necessary: The Doctrinal and Structural Case for Reform

For nearly four decades, federal courts have uniformly held that DoD investigative records—including titling and indexing entries—are exempt from amendment, correction, or judicial review under the Privacy Act when the agency invokes the law-enforcement exemption in 5 U.S.C. § 552a(j)(2).

The leading case, *Doe v. United States Air Force*, 812 F.2d 738 (D.C. Cir. 1987), held that OSI’s investigative files—including the placement of an airman’s name as the “subject” of an investigation—are categorically exempt from amendment even when the underlying allegation is disputed or disproven (holding that the Privacy Act’s law-enforcement exemption bars courts from ordering expungement or correction of investigative subject records).

District courts have consistently applied the same principle to Army CID, Navy/NCIS, and Air Force OSI records. *See, e.g., Doe v. Army*, 660 F. Supp. 2d 31, 36–38 (D.D.C. 2009) (holding CID titling records exempt from amendment despite evidence presented by soldier); *Suggs v. U.S. Army Crime Records Ctr.*, 18 F. Supp. 3d 81, 92–94 (D.D.C. 2015) (upholding CID’s refusal to remove a titling entry, where only “mistaken identity” is a permissible basis for deletion under Army policy).

These authorities make clear that the judiciary cannot fix the titling problem under the existing statutory framework. Indeed, the DoD has relied heavily on these cases to defend titling’s permanence. In *Doe v. United States Air Force*, 812 F.2d 738 (D.C. Cir. 1987), the D.C. Circuit held that OSI investigative files—including the placement of a servicemember’s name as the “subject” of an investigation—are categorically exempt from amendment under the Privacy Act when DoD invokes the law-enforcement exemption. The Court emphasized that it had no authority to order correction or expungement even if the titling was misleading or unfounded.

When Doe petitioned the Supreme Court, the Department of Justice defended titling and indexing as essential law-enforcement and national-security tools, arguing that allowing amendment would “undermine the integrity of investigative records.” Brief for the United States in Opposition at 11–13, *Doe v. United States Air Force*, No. 86-1025 (U.S. filed Feb. 9, 1987). The Supreme Court denied certiorari, 483 U.S. 1020 (1987), leaving intact a regime in which titling is effectively permanent and judicially unreviewable. This underscores the need for Congress to act.

This is the same structural argument DoD uses today to justify retaining a titling entry even when a servicemember is cleared at court-martial, when the allegation is disproven, or when the command finds “no

offense occurred.” Because Congress has never legislated specific due-process limits on titling, DoD has been able to rely on the Privacy Act exemption to make titling—and therefore DCII indexing—effectively permanent.

At the same time, federal courts and security-clearance adjudicators increasingly rely on DCII indexing as derogatory evidence, even without charges, even without probable cause, and even when the underlying investigation resulted in “unfounded” or “no offense occurred” finding. *See, e.g., Duane v. Dep’t of Defense*, 275 F.3d 988, 995–96 (10th Cir. 2002) (upholding DoD’s denial of a clearance based in part on historic investigative indexing); *Hrdlicka v. Dep’t of the Air Force*, EEOC Appeal No. 0120141291 (2016) (noting DCII titling data used in suitability determinations).

Clearance adjudication guidelines expressly allow derogatory investigative data—including titling entries—to be weighed as a reliability factor, even absent any adjudicative finding. See Defense Counterintelligence and Security Agency, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (2021) (listing “unverified or incomplete allegations” and “unresolved conduct” as adjudicative factors). Thus, titling operates as a career-altering stigma that contradicts the core American values of presumption of innocence and proportionality.

Compounding the problem is the dramatic mismatch between the standard required to title a servicemember and the standard required to remove a titling entry. Under DODI 5505.07, a servicemember may be titled based on nothing more than “credible information”—defined as information that *may* cause a reasonable investigator to believe an offense *might* have occurred (DODI 5505.07, encl. 4). This is far below probable cause, far below the standard for arrest, and far below the evidentiary standards necessary for adverse administrative action.

Yet, to remove that same titling entry, DoD requires proof of “actual innocence” —a standard that exceeds the standard for expungement in nearly every civilian jurisdiction. DODI 5505.07, encl. 2. Courts have consistently upheld this arrangement because the Privacy Act exemption leaves them no room to force DoD to adopt a fairer standard. See *Doe v. Air Force*, 812 F.2d at 741–43; *Suggs*, 18 F. Supp. 3d at 94.

What this means in practice is that a servicemember may be titled permanently—and indexed in DCII for 40 years—on information that falls far below probable cause, even when fully acquitted, even when the allegation is disproven, and even when another person is later found responsible.

The system has no external due-process protection, no judicial review, and no meaningful administrative safeguards. It is therefore no surprise that titling is widely described as “practically irreversible” and that DoD investigators themselves often warn servicemembers that titling is “career-ending.”

The structural absence of due process in titling mirrors the systemic flaws condemned in *Manker v. Spencer*, No. 3:18-cv-372, 2019 WL 5846828 (D. Conn. Nov. 7, 2019), where the court denied the Navy’s motion to dismiss a class action alleging unfair discharge-upgrade procedures for Marines with PTSD and TBI. There, the district court emphasized that when an administrative process affects thousands of servicemembers and carries profound liberty and property consequences, constitutional fairness requires meaningful review, consistent standards, and transparent procedures (holding that systemic procedural deficiencies in discharge review boards stated a plausible due process claim).

Titling is even more consequential—and far less regulated—than discharge-upgrade procedures: it affects tens of thousands of servicemembers, shapes eligibility for service, employment, federal careers, and security clearances, and yet remains exempt from amendment, review, oversight, and judicial scrutiny.

Because the courts have made clear—repeatedly—that neither the Privacy Act nor current statutory frameworks permit judicial correction of titling, Congress alone has the authority to fix the problem. Only Congress can impose rational evidentiary standards (such as probable cause), create an independent Titling Review Board with authority to order expungement and notify downstream agencies, require transparency and annual reporting, and authorize limited judicial review of denials.

Without legislative action, titling will continue to function as a system of lifelong administrative branding—imposed without probable cause, insulated from oversight, and incompatible with fundamental fairness – tangentially related to legitimate law enforcement record keeping designed to follow those who truly committed offenses.

VI. Proposed Legislative Fix

We recommend a comprehensive reform package addressing both the low standard for titling and the near impossibility of correction.

1. Establish a Judicially Reviewable Standard for Titling

Congress should require:

- A probable-cause threshold for titling and DCII indexing⁹
- Independent legal review before an individual's name is entered into DCII
- Automatic deletion when allegations are disproven

This brings titling into alignment with constitutional norms and basic fairness.

2. Create a Statutory Untitling Procedure

Congress should adopt a clear, timely, and appealable method allowing removal when:

- Allegations are unfounded
- The investigation is closed with “no offense occurred”
- Exculpatory evidence emerges
- Another individual is responsible

This parallels the authority of Boards for Correction of Military Records while addressing titling directly.

3. Require Notification and Counseling

Upon titling, servicemembers should receive:

- Notice of the basis for the action
- A description of their rights
- A timeline for review
- Access to the ROI

Most titled servicemembers only discover the entry years later during a clearance or job check.

4. Implement the Legislative Proposal

Our proposal—developed with the support of members and military justice practitioners—provides a comprehensive legislative fix:

- Creation of an independent Titling Review Board with expungement authority¹⁰
 - Mandatory DoD notification to all downstream federal, state, and credentialing agencies when a titling record is corrected or removed¹¹
- Authorization for federal district court review of titling-removal

denials¹²

- Prohibition on taking adverse action based solely on a titling entry absent corroborated evidence¹³
- Annual reporting to congressional oversight committees on titling activity and corrections¹⁴

These reforms will bring transparency, fairness, and accountability to a system currently lacking all three.

VII. Why This Matters: What Reality Looks Like After Congress Acts

If Congress enacts these reforms, the landscape of military justice, career mobility, and national-security vetting changes overnight. Titling would no longer function as an unreviewable, career-long administrative scar imposed on the lowest evidentiary threshold in American law.

Instead, a servicemember could be titled only upon a probable-cause determination, documented in writing, and reviewed by an independent legal authority before any name is entered into DCII. Investigators could still pursue leads, open cases, and conduct interviews based on credible information, but a person's name could not be permanently indexed in a federal investigative system unless the facts met a constitutionally recognized standard. This alone prevents thousands of future wrongful or premature entries.

Just as importantly, the new Titling Review Board would give servicemembers for the first time a meaningful opportunity to challenge, correct, and, where appropriate, expunge an erroneous titling action. Untitling would no longer require the impossible "actual innocence" showing; instead, the standard would mirror ordinary administrative justice—allowing removal when allegations are disproven, when the investigation is unfounded, when another

individual is responsible, or when the underlying information is unreliable. And because the Board's decisions would be subject to limited judicial review, servicemembers would no longer be trapped inside a closed-loop system where the agency that created the error is the only entity permitted to review it.

Downstream agencies (the Defense Counterintelligence and Security Agency, federal suitability offices, state licensing boards, and law-enforcement organizations) would receive formal notice of any correction or deletion, ensuring that long-disproven allegations do not continue resurfacing years or decades later.

DCII would become an accurate, fair investigative tool rather than a one-way ratchet of stigma. Clearance adjudications would still consider legitimate derogatory information, but no longer treat a bare titling entry as evidence of misconduct. Federal employers would be barred from denying a job based solely on an uncorroborated titling record.

In practical terms, servicemembers who are wrongly titled would no longer see their careers permanently derailed. An infantry officer falsely accused during a command climate survey, an aircrew member caught in a mistaken-identity situation, a Marine cleared by a civilian prosecutor—none of these individuals would spend the rest of their careers explaining a DCII entry that never should have existed. Instead, they would have access to due process, a path to correction, and a system aligned with constitutional values.

Above all, adopting this legislative fix restores trust—trust that the military justice system is fair; trust that the government will not brand servicemembers without evidence; and trust that the investigative tools designed to protect national security will not be misused to damage innocent lives. For the first time since titling was created, the system

would reflect the principles servicemembers swear to defend: fairness, accountability, and the rule of law.

VIII. Conclusion

Titling and indexing were never designed to impose lifelong marks of suspicion. Yet that is precisely how the system functions today—quietly, permanently, and with almost no due process. We are committed to advocating for reforms that restore fairness, transparency, and accountability to this powerful yet poorly understood administrative mechanism.

Join the Organization That Fights for You

This article is one of more than 2,000 "Law Review" articles available at www.roa.org/lawcenter— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting.

One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files *amicus curiae* ("friend of the court") briefs in the Supreme Court and other courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

Your membership makes the mission possible.

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants of past or present service members, so families can stand with those who serve. Join online at roa.org/memberoptions or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

AUTHOR BIOGRAPHIES

John N. Maher is a retired Lieutenant Colonel in the U.S. Army Reserve Judge Advocate General's Corps, a career national-security attorney, and the founder of Maher Legal Services, P.C., a veteran-owned law firm focused on the Uniformed Services Employment and Reemployment Rights Act (USERRA) and veterans' rights, federal employment litigation, national-security matters, and complex civil litigation. Over a three-decade career in uniform and federal service, he served as Deputy General Counsel of the Defense Intelligence Agency, General Counsel of the U.S. Office of Personnel Management by Presidential Appointment to the SES, and as a trial attorney in the Civil Division of the U.S. Department of Justice.

LTC Maher served multiple overseas deployments, including missions in Macedonia, Afghanistan (twice), and Kuwait. He also served as Chief of Contracts and Fiscal Law within for General McChrystal's USFOR-A Command in Kabul and as the program manager at the Justice Center in Parwan, assisting the Afghan government—under a Bureau of International Narcotics and Law Enforcement program—with the prosecution of national-security crimes under Afghan law.

He has secured presidential pardons for combat veterans (U.S. Army 1LT Clint Lorance in 2019 and former Marine Dustin Heard in 2020), and his advocacy has been featured in national media, including the STARZ documentary series *Leavenworth* and Don Brown's book, *Travesty of Justice*.

Mr. Maher has taught as an adjunct professor of law for over 20 years and has published extensively on military justice, habeas corpus review of court-martial convictions, federal contracting, and veterans' law. He has delivered continuing legal education lectures recently on USERRA for the Chicago Bar Association, the Illinois Institute for Continuing Legal Education (IICLE), and the DuPage County Bar Association in October and November 2025. He is a life member of the VFW and the Reserve Organization of America (ROA).

Kevin J. Mikolashek served on active duty as a Judge Advocate in the U.S. Army, including assignments as a prosecutor, operational law attorney in Kuwait, appellate defense counsel, and as an attorney in the Army Litigation Division at the Pentagon. Following his active-duty service, he also served in the U.S. Army Reserve JAG Corps. Mr. Mikolashek spent a decade as an Assistant United States Attorney in the Eastern District of Virginia, one of the fastest federal dockets in the country. After earning a mid-career M.B.A. from the University of Virginia's Darden School of Business, he served as legal counsel at the Federal Reserve Board and later earned qualification as a Certified Compliance Specialist. He has served on the board of a nonprofit organization and currently serves as the Managing Director of Maher Legal Services, where he focuses on veterans' rights, federal-sector employment disputes, fraud investigations, and national-security matters. Mr. Mikolashek lives in Northern Virginia with his family.

FOOTNOTES

¹ DODI 5505.07, *Titling and Indexing of Subjects of Criminal Investigations* (2018) (defining “credible information” and mandating titling based on the minimum threshold necessary to presume an offense may have occurred).

² *Id.* (requiring law-enforcement components to upload titling data to DCII, a permanent investigative index used in clearance and suitability adjudications).

³ MAJ Patricia A. Ham, *Titling and Indexing*, *Army Lawyer*, Aug. 1998 (explaining administrative nature of titling decisions).

⁴ DCSA, *Adjudication Guidelines* (2021) (listing investigative data, including titling entries, as factors in evaluating reliability and trustworthiness).

⁵ *I’ve Been Titled!* (2018) (explaining DCII’s 40-year record retention).

⁶ 32 C.F.R. § 633.12 (requiring “new, relevant, and material” evidence to amend an ROI).

⁷ *Id.* (untitling permitted only for mistaken identity; CG, CID decision final).

⁸ *Id.*; Fort Benning Legal Assistance Guide (“titling is virtually permanent”).

⁹ Maher Legal Services Draft Legislation (2021) (proposing probable-cause threshold for titling).

¹⁰ *Id.* (proposing independent Titling Review Board).

¹¹ *Id.* (requiring downstream agency correction notice).

¹² *Id.* (allowing judicial review in district court).

¹³ *Id.* (barring adverse actions based solely on titling entries without corroboration).

¹⁴ *Id.* (mandating annual reporting to oversight committees).

¹⁵ *Manker v. Spencer*, No. 3:18-cv-372 (D. Conn. 2019) (denying motion to dismiss systemic challenge to discharge review procedures).

John Maher and Kevin Mikolashek have prepared the following document with a specific legislative proposal to fix the “titling” problem:



March 8, 2026

Reserve Organization of America
1 Constitution Avenue NE
Washington, DC 20002

Re: Legislative Reform of Military Criminal Investigative “Titling” Practices

Dear Members of the Board and Legislative Affairs Committee:

We write to request the Reserve Organization of America’s consideration of a legislative reform initiative addressing a longstanding administrative practice affecting thousands of service members across the Armed Forces: the military investigative procedure commonly known as “titling.”

Under current Department of Defense investigative policies, a service member may be permanently associated with a criminal investigative record based on minimal evidentiary information that does not require arrest, indictment, or conviction. The proposed solution is equally straightforward: Congress should establish a statutory framework ensuring that permanent investigative entries affecting the lives and reputations of service members are created only under appropriate evidentiary standards and subject to meaningful review procedures.

Over the past several years, our law practice has represented numerous service members navigating the military justice system and the administrative consequences that frequently follow military investigations. In the course of that work, we have repeatedly encountered a structural feature of the Department of Defense investigative system that raises substantial fairness concerns and, in our respectful view, warrants congressional attention.

Once created, investigative entries frequently remain in federal law enforcement databases indefinitely and may appear during background investigations, security clearance reviews, and employment screening processes long after the underlying investigation has concluded. The resulting effects are not confined to individual reputation. Reserve and National Guard personnel frequently depend upon civilian employment in professions requiring professional licensing, security clearance eligibility, or background screening. Permanent investigative entries can therefore affect the economic stability of military families and the readiness of the reserve components upon which the Nation increasingly relies.

Congress has long recognized that protecting the civil rights and economic stability of service members strengthens national defense. The Servicemembers Civil Relief Act reflects that

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legislative judgment, declaring that civil protections for service members ultimately enable them to devote their full energies to the defense of the Nation. 50 U.S.C. § 3902. Likewise, the Privacy Act of 1974 reflects Congress's determination that federal recordkeeping systems must maintain records that are accurate, relevant, timely, and complete. 5 U.S.C. § 552a(e)(5).

For that reason, we respectfully request that the Reserve Organization of America consider supporting a targeted legislative reform initiative addressing military investigative titling practices. The enclosed materials are organized to assist the Association and its legislative staff in evaluating both the problem and the proposed solution:

Exhibit A. Proposed Amendment to the National Defense Authorization Act: Military Investigative Titling Fairness and Due Process Act *(Proposed statutory language establishing evidentiary standards, notice procedures, and review mechanisms governing military investigative titling practices.)*

Exhibit B. Legislative History and Prior Congressional Consideration of Military Investigative Titling Practices *(Historical overview of investigative titling policies, development of the current administrative framework, and emerging congressional interest in statutory reform.)*

Exhibit C. Current State of the Law Governing Military Investigative Titling *(Explanation of Department of Defense Instruction 5505.07 and the administrative procedures currently governing titling and indexing within Department of Defense investigative databases.)*

Exhibit D. Sample Congressional Letter Supporting National Defense Authorization Act Amendment *(Illustrative letter that Members of Congress may use to request inclusion of the proposed legislative reform in the National Defense Authorization Act.)*

Exhibit E. Comparison of Military Investigative Titling Practices and Civilian Federal Law Enforcement Record Systems *(Comparison of DoD investigative titling practices with recordkeeping standards used in federal civilian law enforcement systems such as the National Crime Information Center.)*

Exhibit F. Congressional Staff Briefing Memorandum: Why Congress Should Reform Military Investigative Titling Practices *(Policy memorandum summarizing the problem, explaining the legislative solution, and outlining the anticipated operational and budgetary impact of the proposed reform.)*

Exhibit G. Legislative Strategy Memorandum: Path to Enactment Through the National Defense Authorization Act *(Analysis of congressional jurisdiction, committee process, and legislative strategy for advancing the proposed amendment within the annual defense authorization process.)*

Exhibit H. Documented Examples and Illustrative Consequences of Military

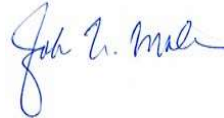
Investigative Titling Practices (*Open-source reporting and illustrative scenarios demonstrating how investigative titling practices may produce long-term professional and economic consequences for service members.*)

Exhibit I. Authorities and Sources Supporting Legislative Reform of Military Investigative Titling Practices (*Compilation of legal authorities, Department of Defense policies, statutory provisions, and publicly available reporting relevant to investigative titling practices.*)

The Reserve Organization of America has long served as a leading advocate for the rights and readiness of America's reserve components. Given the particular impact that investigative record systems can have upon reservists and National Guard personnel whose civilian careers depend upon professional reputation and security clearance eligibility, the Association's voice would carry significant weight in advancing this issue.

I welcome the opportunity to brief the Association's leadership or legislative staff regarding these materials and the potential legislative solutions described therein.

Respectfully,



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Encl(s)

LEGISLATIVE BRIEFING PACKET Reform of Military Criminal Investigative “Titling” Practices

Prepared for consideration by the Reserve Organization of America

EXECUTIVE SUMMARY

The purpose of this briefing packet is to request the support of the Reserve Organization of America in advancing targeted legislative reform addressing Department of Defense investigative titling practices. The proposed amendment to the National Defense Authorization Act, included as Exhibit A, establishes statutory standards governing the creation and review of permanent investigative record entries affecting members of the Armed Forces. The amendment preserves the ability of military criminal investigative organizations to conduct effective investigations while ensuring that permanent investigative records capable of affecting the reputations and professional opportunities of service members are supported by appropriate evidentiary standards and subject to meaningful review procedures.

The Reserve Organization of America has long served as a respected voice on Capitol Hill for the readiness and welfare of the Reserve Components. Because investigative titling practices disproportionately affect reservists and National Guard personnel whose civilian employment depends upon background investigations and security clearance eligibility, the Association is uniquely positioned to raise awareness of this issue among Members of Congress and Armed Services Committee staff. Support from the Reserve Organization of America—whether through legislative outreach, policy endorsement, or engagement with congressional staff—would materially assist in advancing this reform within the annual National Defense Authorization Act process.

Military criminal investigative agencies maintain internal investigative record systems that associate individuals with criminal investigations through a process commonly known as “titling.” Under current Department of Defense investigative policies, a service member may be permanently associated with a criminal investigative record whenever investigators determine that “credible information” suggests that the individual may have committed an offense. This evidentiary threshold is significantly lower than the constitutional standard of probable cause required for arrest and far lower than the burden required to sustain criminal conviction.

Although titling was originally intended as an internal investigative tracking mechanism, the integration of federal law enforcement databases and the expansion of modern background investigation systems have transformed titling entries into records capable of affecting employment, security clearance eligibility, and professional licensing long after the underlying investigation has concluded. In some cases, these records persist even when no criminal charges were ever filed or when the accused service member was ultimately acquitted.

These consequences affect not only individual reputation but also the economic stability of military families and the operational readiness of the Nation’s reserve components. Reservists and National Guard personnel frequently rely upon civilian employment in fields requiring background

screening and security clearance eligibility. Permanent investigative records therefore may carry substantial economic consequences unrelated to any criminal adjudication.

Congress has historically acted when military administrative procedures produced systemic consequences inconsistent with constitutional principles or congressional policy. The Servicemembers Civil Relief Act and the Privacy Act of 1974 both reflect Congress's longstanding commitment to protecting the civil rights and economic stability of service members while preserving the operational effectiveness of the Armed Forces.

The proposed legislative amendment provides a targeted reform designed to preserve legitimate investigative capabilities while ensuring that permanent investigative records affecting service members are created only under appropriate evidentiary standards and subject to meaningful review procedures.

The proposed reform is budget neutral and can be implemented using existing Department of Defense investigative administrative structures.

TABLE OF EXHIBITS Reform of Military Criminal Investigative “Titling” Practices

Exhibit A. Proposed Amendment to the National Defense Authorization Act: Military Investigative Titling Fairness and Due Process Act (*Proposed statutory language establishing evidentiary standards, notice procedures, and review mechanisms governing military investigative titling practices.*)

Exhibit B. Legislative History and Prior Congressional Consideration of Military Investigative Titling Practices (*Historical overview of investigative titling policies, development of the current administrative framework, and emerging congressional interest in statutory reform.*)

Exhibit C. Current State of the Law Governing Military Investigative Titling (*Explanation of Department of Defense Instruction 5505.07 and the administrative procedures currently governing titling and indexing within Department of Defense investigative databases.*)

Exhibit D. Sample Congressional Letter Supporting National Defense Authorization Act Amendment (*Illustrative letter that Members of Congress may use to request inclusion of the proposed legislative reform in the National Defense Authorization Act.*)

Exhibit E. Comparison of Military Investigative Titling Practices and Civilian Federal Law Enforcement Record Systems (*Comparison of DoD investigative titling practices with recordkeeping standards used in federal civilian law enforcement systems such as the National Crime Information Center.*)

Exhibit F. Congressional Staff Briefing Memorandum: Why Congress Should Reform Military Investigative Titling Practices (*Policy memorandum summarizing the problem, explaining the legislative solution, and outlining the anticipated operational and budgetary impact of the proposed reform.*)

Exhibit G. Legislative Strategy Memorandum: Path to Enactment Through the National Defense Authorization Act (*Analysis of congressional jurisdiction, committee process, and legislative strategy for advancing the proposed amendment within the annual defense authorization process.*)

Exhibit H. Documented Examples and Illustrative Consequences of Military Investigative Titling Practices (*Open-source reporting and illustrative scenarios demonstrating how investigative titling practices may produce long-term professional and economic consequences for service members.*)

Exhibit I. Authorities and Sources Supporting Legislative Reform of Military Investigative Titling Practices (*Compilation of legal authorities, Department of Defense policies, statutory provisions, and publicly available reporting relevant to investigative titling practices.*)

EXHIBIT A Proposed Amendment to the National Defense Authorization Act Reform of Military Criminal Investigative Titling Practices

Preamble and Legislative Purpose

Military criminal investigative organizations maintain investigative record systems that associate individuals with criminal investigations through a process commonly known as “titling.” Under current Department of Defense investigative policy, an individual may be titled whenever investigators determine that “credible information” indicates that the person may have committed an offense under investigation. This evidentiary threshold is significantly lower than the probable cause standard required for arrest and far lower than the burden necessary to sustain criminal conviction.

Although titling was originally intended as an internal investigative tracking mechanism, the practical consequences of titling entries have expanded significantly over time. Investigative entries may remain indefinitely within federal investigative databases and may appear during security clearance adjudications, federal background investigations, professional licensing reviews, and employment screening processes.

As a result, investigative record entries may impose long-lasting reputational, professional, and economic consequences on service members and their families despite the absence of criminal conviction or disciplinary findings. These consequences are particularly significant for members of the Reserve Components and National Guard whose continued military service frequently depends upon civilian employment requiring background investigations or security clearance eligibility.

Congress has previously addressed similar concerns regarding inaccurate or incomplete federal records through enactment of the Privacy Act of 1974, which requires federal agencies to maintain records that are accurate, relevant, timely, and complete. 5 U.S.C. § 552a(e)(5).

Congress therefore has a substantial interest in ensuring that permanent investigative records affecting the lives and reputations of service members are created and maintained under fair and transparent procedures consistent with constitutional principles, federal recordkeeping law, and longstanding congressional policy protecting the civil rights and economic stability of members of the Armed Forces.

The following legislative proposal establishes statutory standards governing the creation, maintenance, and review of military criminal investigative titling records while preserving the ability of military investigators to conduct effective criminal investigations.

Draft Legislative Text

A BILL

To amend title 10, United States Code, to establish statutory standards governing the creation, maintenance, and review of military criminal investigative titling records affecting members of the Armed Forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “**Military Investigative Titling Fairness and Due Process Act.**”

SECTION 2. CONGRESSIONAL FINDINGS.

Congress makes the following findings:

- (1) Military criminal investigative organizations maintain investigative record systems that associate individuals with criminal investigations through a process commonly known as “titling.”
- (2) Under current Department of Defense investigative policies, an individual may be titled when investigators determine that “credible information” indicates that the person may have committed an offense under investigation.
- (3) The “credible information” standard is significantly lower than the constitutional probable cause standard required for arrest under the Fourth Amendment to the Constitution of the United States and far lower than the burden required to sustain criminal conviction.
- (4) Titling entries frequently remain in federal investigative databases even when no criminal charges are filed or when the accused service member is ultimately acquitted.
- (5) These investigative entries may appear during federal background investigations, security clearance determinations, federal employment screening processes, and professional licensing reviews.
- (6) As a result, permanent investigative record entries may impose substantial reputational, professional, and economic consequences on service members and their families despite the absence of criminal conviction or disciplinary findings.
- (7) Members of the Reserve Components and National Guard are particularly affected by these consequences because their continued military service often depends upon civilian employment requiring background investigations or security clearance eligibility.
- (8) Congress has previously recognized the importance of accurate federal recordkeeping systems through enactment of the Privacy Act of 1974, which requires federal agencies to maintain records that are accurate, relevant, timely, and complete. 5 U.S.C. § 552a(e)(5).
- (9) Congress possesses constitutional authority under Article I of the Constitution to regulate the Armed Forces and to establish rules governing military justice and investigative procedures. U.S. CONST. art. I, § 8, cls. 12–14.
- (10) Establishing statutory standards governing permanent investigative record entries affecting members of the Armed Forces promotes fairness, transparency, and public confidence in the military justice system while preserving the ability of military investigators to conduct effective criminal investigations.

SECTION 3. MILITARY CRIMINAL INVESTIGATIVE TITLING PROCEDURES.

- (a) In General.

Chapter 47 of title 10, United States Code, is amended by inserting after section ____ the following new section:

§ ____ Military Criminal Investigative Titling Procedures

(a) Evidentiary Standard for Permanent Investigative Entries.

(1) No member of the Armed Forces may be permanently entered into a criminal investigative record system maintained by the Department of Defense unless investigators determine that probable cause exists to believe that the individual committed the offense under investigation.

(2) For purposes of this section, the term “probable cause” shall have the meaning applied under the Fourth Amendment to the Constitution of the United States.

(b) Written Notice to Service Member.

The Secretary of Defense shall ensure that any member of the Armed Forces whose name is entered into a criminal investigative record system receives written notice of such entry not later than 30 days after the titling determination.

Such notice shall include—

- (1) a statement that the individual has been entered into a criminal investigative record system;
- (2) a brief description of the allegations under investigation; and
- (3) information describing the procedures available to request review or removal of the investigative entry.

(c) Administrative Petition for Removal.

The Secretary of Defense shall establish procedures allowing individuals to petition for removal of investigative record entries in circumstances including— (1) closure of an investigation without referral of criminal charges;

- (2) declination of prosecution by competent military or civilian prosecutorial authority;
- (3) acquittal following court-martial proceedings; or
- (4) a determination that the allegation was unfounded or unsupported by credible evidence. (d)

Independent Administrative Review.

Petitions submitted under subsection (c) shall be reviewed by an authority independent from the investigative organization responsible for the underlying investigation.

(e) Automatic Removal of Investigative Entries.

Investigative entries shall be removed automatically from Department of Defense criminal investigative record systems when—

- (1) the investigation concludes with a determination that the allegation was unfounded; (2) competent prosecutorial authority declines to pursue criminal charges based upon lack of probable cause; or
- (3) the accused service member is acquitted following court-martial proceedings.

(f) Record Accuracy and Privacy Compliance.

The Secretary of Defense shall ensure that investigative record systems maintained pursuant to this section comply with the accuracy and record maintenance requirements established by the Privacy Act of 1974. 5 U.S.C. § 552a(e)(5).

(g) Regulations.

Not later than 180 days after the date of enactment of this section, the Secretary of Defense shall promulgate regulations establishing procedures necessary to carry out the provisions of this section.

(h) Report to Congress.

Not later than one year after the date of enactment of this section, the Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives describing—

- (1) the procedures established pursuant to this section;
- (2) the number of investigative titling entries reviewed under the new procedures; and (3) any recommendations for additional legislative action.

SECTION 4. IMPLEMENTATION.

The Secretary of Defense shall implement the procedures required by this Act not later than 180 days after enactment.

SECTION 5. BUDGETARY IMPACT.

Congress expects that implementation of this Act will be accomplished using existing administrative and investigative structures of the Department of Defense and will not result in a significant increase in federal spending or personnel requirements.

SECTION 6. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to limit the authority of military criminal investigative organizations to conduct investigations of suspected violations of the Uniform Code of Military Justice or other federal criminal law.

SECTION 7. EFFECTIVE DATE.

The provisions of this Act shall apply—

- (1) to investigative entries created on or after the date of enactment; and (2) to petitions for review submitted after that date regarding investigative entries created prior to enactment.

EXHIBIT B Legislative History and Prior Congressional Consideration Military Investigative Titling Practices

Congress has long exercised its constitutional authority under Article I to regulate the Armed Forces and to establish procedural safeguards governing military justice and investigative practices. U.S. CONST. art. I, § 8, cls. 12–14. Throughout the history of the Uniform Code of Military Justice and related defense legislation, Congress has intervened when necessary to ensure that military justice procedures remain consistent with constitutional principles, operational readiness, and public confidence in the Armed Forces.

The investigative practice commonly referred to as “titling” developed within Department of Defense investigative agencies as an internal recordkeeping method designed to document investigative activity and ensure that investigative records remain searchable for law-enforcement purposes. Military criminal investigative organizations—including the Army Criminal Investigation Division, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations—maintain investigative records pursuant to Department of Defense policies governing criminal investigative activities.

The current governing policy appears in Department of Defense Instruction 5505.07, “Titling and Indexing by DoD Law Enforcement Activities,” dated August 8, 2023. That instruction directs DoD law-enforcement activities to title and index subjects of criminal investigations when there is “credible information” indicating that the person may have committed a criminal offense. DoDI 5505.07 (Aug. 8, 2023).

The titling determination functions as an administrative investigative recordkeeping decision rather than a legal finding of guilt. The instruction expressly provides that titling and indexing “do not imply guilt or innocence.” *Id.*

When the practice first developed, investigative records were largely confined to internal law-enforcement files and rarely had broader consequences beyond the investigative process itself. Over time, however, the integration of federal investigative databases and the increasing reliance on centralized background investigation systems dramatically expanded the practical significance of investigative record entries.

Modern federal employment screening systems, security clearance adjudications, and professional licensing reviews often rely upon centralized investigative record systems such as the Defense Central Index of Investigations (“DCII”). As a result, investigative entries created for internal law-enforcement purposes may now appear during background investigations conducted by federal agencies and private employers.

Congress has previously recognized the risks posed by inaccurate or incomplete federal record systems. The Privacy Act of 1974 established a comprehensive statutory framework governing federal agency recordkeeping and requires federal agencies to maintain records that are “accurate, relevant, timely, and complete.” 5 U.S.C. § 552a(e)(5).

Recent congressional materials suggest that policymakers have begun examining investigative titling practices more closely. A publicly available House amendment document dated August 27, 2025 includes proposed definitions of “titling,” “covered database,” and “expungement,” indicating that legislative proposals addressing titling practices have already been considered during recent congressional deliberations.

The proposed legislative amendment accompanying this briefing packet builds upon these developments by establishing statutory standards governing the creation, maintenance, and review of permanent investigative record entries affecting members of the Armed Forces while preserving the ability of military investigators to conduct effective criminal investigations.

EXHIBIT C Current State of the Law Governing Military Investigative Titling

Military investigative titling practices are governed primarily by Department of Defense investigative policy rather than by statute. The principal regulatory framework appears in Department of Defense Instruction 5505.07, “Titling and Indexing by DoD Law Enforcement Activities,” issued August 8, 2023.

The instruction provides that DoD law-enforcement activities will title and index subjects of criminal investigations as soon as there is “credible information” indicating that the person committed a criminal offense. DoDI 5505.07 (Aug. 8, 2023).

The instruction defines credible information as information that, considering the source and surrounding circumstances, would cause a trained investigator to believe that a criminal offense may have occurred and that the individual may be involved. This evidentiary threshold differs significantly from the constitutional standard of probable cause required under the Fourth Amendment for arrest or search warrants.

Under the instruction, titling and indexing are described as administrative investigative procedures rather than determinations of criminal guilt. The instruction expressly states that titling does not imply that the individual committed the offense under investigation.

Once an individual is titled, the investigative entry is indexed within the Defense Central Index of Investigations (“DCII”), which serves as a searchable database of DoD investigative records.

Although titling entries are not criminal convictions and do not constitute disciplinary findings, their presence within investigative databases may become visible during background investigations conducted for federal employment, security clearance eligibility, and certain professional licensing processes.

The instruction does permit individuals to request review, correction, or expungement of investigative entries. DoDI 5505.07 establishes administrative procedures through which individuals may submit written requests challenging titling determinations or requesting removal of investigative records.

However, the instruction also provides that titling decisions are based on the credible information standard existing at the time of the investigation. As a result, investigative entries may remain indexed even where investigations conclude without criminal charges or where the accused individual is ultimately acquitted.

Unlike other areas of military justice procedure—such as court-martial jurisdiction, sentencing authority, and appellate review—titling practices are governed almost entirely through administrative policy rather than explicit statutory standards enacted by Congress.

The proposed legislative amendment accompanying this briefing packet therefore represents the first effort to establish a comprehensive statutory framework governing permanent investigative record entries affecting members of the Armed Forces.

EXHIBIT D Sample Congressional Letter Supporting NDAA Amendment

[Date]

The Honorable [Chairman]
House Armed Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I write to request consideration of a legislative provision addressing the Department of Defense investigative practice commonly known as “titling.” Under current Department of Defense investigative policies, military criminal investigative organizations may permanently associate a service member’s name with a criminal investigation record based upon a minimal evidentiary threshold that does not require arrest, indictment, or criminal conviction.

Although investigative recordkeeping serves legitimate law enforcement purposes, titling entries may remain indefinitely within federal investigative databases and may appear during background investigations conducted for security clearances, federal employment eligibility determinations, and professional licensing reviews. In cases where criminal charges were never filed or where the accused service member was ultimately acquitted, the persistence of these investigative entries can create lasting reputational and economic consequences.

Congress has long recognized that protecting the civil rights and economic stability of service members strengthens national defense. Statutes such as the Servicemembers Civil Relief Act and the Privacy Act of 1974 reflect Congress’s commitment to ensuring that federal administrative systems operate in a manner consistent with the rights of those who serve in uniform.

The proposed legislative amendment would establish clear statutory standards governing the creation and maintenance of permanent investigative records affecting members of the Armed Forces. The amendment preserves the ability of military investigators to conduct effective criminal investigations while ensuring that permanent investigative records are supported by appropriate evidentiary standards and subject to meaningful review procedures.

I respectfully request that the Committee consider inclusion of this provision in the forthcoming National Defense Authorization Act. Thank you for your continued leadership in maintaining both the effectiveness and fairness of the military justice system.

Respectfully,
[Member of Congress]

EXHIBIT E Comparison of Military Investigative Titling Practices and Civilian Federal Law Enforcement Record Systems

Understanding the policy concerns surrounding military investigative titling practices requires comparison with the recordkeeping standards used by civilian federal law enforcement systems.

Federal civilian investigative databases—including the National Crime Information Center (“NCIC”) and related criminal justice information systems administered by the Federal Bureau of Investigation—operate under significantly different procedural safeguards than those currently governing military investigative titling.

NCIC serves as the central nationwide information system for criminal justice records maintained by federal, state, and local law enforcement agencies. The system includes records relating to arrests, outstanding warrants, stolen property, missing persons, and other criminal justice information. Because these records are relied upon by law enforcement agencies across the country, strict standards govern the entry, maintenance, and correction of records within the system.

In civilian law enforcement systems, entries capable of affecting an individual’s liberty or employment opportunities generally require a formal law enforcement action such as an arrest, a warrant, or the filing of criminal charges. Investigative suspicion alone typically does not generate permanent entries within national criminal justice databases.

Civilian record systems also incorporate robust correction mechanisms. The Privacy Act of 1974 requires federal agencies maintaining record systems to ensure that records are accurate, relevant, timely, and complete. 5 U.S.C. § 552a(e)(5). Individuals are entitled to request correction or amendment of inaccurate federal records.

By contrast, military investigative titling practices permit permanent association of an individual’s name with a criminal investigation file based on the comparatively low evidentiary threshold of “credible information.” Although such entries do not constitute criminal convictions, their presence within federal investigative databases may influence background investigations conducted for employment, licensing, or security clearance eligibility.

The proposed legislative reform seeks to align military investigative recordkeeping practices more closely with the fairness principles governing civilian federal law enforcement systems while preserving the operational effectiveness of military criminal investigative organizations.

EXHIBIT F Congressional Staff Briefing Memorandum Why Congress Should Reform Military Investigative Titling Practices Overview

Military criminal investigative agencies maintain investigative record systems that associate individuals with criminal investigations through a process commonly known as titling. Under current Department of Defense investigative policy, investigators may title a subject of an investigation whenever credible information indicates that the person may have committed an offense.

Although titling was originally intended as an internal investigative tracking mechanism, the integration of federal investigative databases and modern background investigation systems has transformed titling entries into records capable of affecting employment opportunities, security clearance eligibility, and professional licensing decisions long after the underlying investigation has concluded.

The Policy Problem

The permanence of investigative indexing creates a structural imbalance between investigative recordkeeping and procedural fairness. Individuals may carry permanent investigative records within federal databases despite never having been formally charged with a crime or despite having been acquitted of all charges.

These consequences may affect a wide range of civilian career opportunities, including employment in federal service, defense contracting, aviation, financial services, and other professions requiring background investigations or security clearance eligibility.

The issue is particularly significant for members of the Reserve Components. Many reservists depend upon civilian employment requiring background investigation review, and investigative record entries may therefore affect both their civilian careers and their continued military service.

Why Congress Should Act

Congress possesses clear constitutional authority to regulate the Armed Forces and to establish rules governing military investigative procedures. When administrative practices produce systemic consequences inconsistent with congressional policy or constitutional principles, Congress has historically intervened through targeted statutory reform.

The proposed amendment does not eliminate investigative recordkeeping. Instead, it ensures that permanent investigative records affecting the lives and reputations of service members are created only under appropriate evidentiary standards and subject to meaningful review procedures.

Budgetary Impact

The proposed reform is expected to be budget neutral. Implementation of the amendment relies upon existing Department of Defense investigative administrative structures and does not require the creation of new investigative agencies or substantial increases in personnel or funding.

Conclusion

By establishing statutory standards governing the creation and review of permanent investigative records affecting service members, Congress can strengthen fairness within the military justice system while preserving the operational effectiveness of military criminal investigative organizations.

EXHIBIT G Legislative Strategy Memorandum Path to Enactment of the Military Investigative Titling Fairness and Due Process Act Through the National Defense Authorization Act

Purpose of This Memorandum

This memorandum outlines a practical legislative pathway through which Congress may enact statutory reform governing military investigative titling practices. The objective of this strategy is to provide the Reserve Organization of America and interested Members of Congress with a realistic and achievable framework for introducing and advancing the proposed amendment within the annual National Defense Authorization Act.

The National Defense Authorization Act (“NDAA”) has served for decades as the principal legislative vehicle through which Congress exercises its constitutional authority to regulate the Armed Forces. Because the NDAA is enacted annually and routinely includes reforms affecting military justice, personnel policy, and administrative procedures within the Department of Defense, it provides an appropriate and historically consistent vehicle for addressing investigative titling practices.

Relevant Congressional Committees

Jurisdiction over military justice and Department of Defense investigative procedures rests primarily with the Armed Services Committees of both chambers of Congress.

In the House of Representatives, legislative jurisdiction lies with the House Armed Services Committee. Within that committee, matters relating to military justice, personnel policy, and administrative procedures affecting service members are frequently addressed through the Military Personnel Subcommittee.

In the Senate, jurisdiction lies with the Senate Armed Services Committee. That committee similarly maintains responsibility for oversight of military justice procedures and Department of Defense investigative practices. Legislation addressing investigative titling practices therefore falls squarely within the jurisdiction of the Armed Services Committees in both chambers.

Legislative Vehicle: National Defense Authorization Act

The National Defense Authorization Act provides the most practical legislative vehicle for addressing investigative titling practices. The NDAA has historically served as the principal statute through which Congress enacts reforms affecting the Uniform Code of Military Justice, personnel management policies, and administrative procedures affecting members of the Armed Forces.

Examples of significant military justice reforms enacted through the NDAA include the Military Justice Act of 2016 and numerous subsequent amendments addressing procedural rights within the court-martial system.

Because investigative titling practices directly affect service members’ reputational and professional interests, as well as the administration of military justice, incorporation of this reform into the NDAA would be consistent with prior congressional practice.

Placement Within the NDAA

The proposed amendment could be incorporated into the NDAA within one of several titles depending upon committee preference.

One logical placement would be within Title V, which traditionally addresses matters relating to military personnel policy and service member protections.

Alternatively, the amendment could be incorporated within a title addressing administrative or procedural matters affecting Department of Defense operations.

Committee counsel typically determine final placement of amendments during the markup process.

Role of the Reserve Organization of America

The Reserve Organization of America is uniquely positioned to serve as an effective advocate for this reform. ROA's historic mission has been to promote policies that strengthen the readiness and welfare of the Reserve Components of the Armed Forces. Investigative titling practices disproportionately affect reservists and National Guard members because those service members frequently depend upon civilian employment requiring background investigations or security clearance eligibility.

By raising awareness of the issue among Members of Congress and Armed Services Committee staff, ROA can help ensure that the perspectives of reserve component service members are fully considered during legislative deliberations.

ROA's longstanding relationships with congressional offices and its reputation as a trusted voice for the reserve community give the organization a particularly effective platform from which to advocate for reform.

Bipartisan Appeal of the Proposal

Reform of investigative titling practices presents an opportunity for bipartisan legislative cooperation.

The proposed amendment advances several principles that have historically enjoyed bipartisan support in Congress, including protection of service members' civil rights, promotion of fairness within the military justice system, and preservation of the economic stability of military families.

At the same time, the amendment preserves the operational effectiveness of military criminal investigative organizations and does not interfere with the ability of investigators to conduct thorough criminal investigations.

The reform is therefore consistent with both civil liberties concerns and national security priorities.

Budgetary Considerations

The proposed reform is expected to be budget neutral. Implementation of the amendment relies upon existing Department of Defense investigative administrative structures and does not require creation of new investigative organizations or substantial increases in personnel or funding.

Instead, the amendment primarily establishes statutory standards governing investigative recordkeeping practices that are already conducted within existing investigative agencies.

Because the reform is administrative in nature, it is unlikely to generate significant scoring concerns during congressional budget review.

Conclusion

The National Defense Authorization Act provides a practical and historically appropriate vehicle through which Congress may address the issue of military investigative titling practices.

By establishing clear statutory standards governing the creation and review of permanent investigative records affecting service members, Congress can strengthen fairness within the military justice system while preserving the operational effectiveness of military investigative organizations.

With the support of advocacy organizations such as the Reserve Organization of America and interested Members of Congress, the proposed amendment offers a realistic opportunity to address a longstanding administrative issue affecting the reputations, careers, and economic stability of members of the Armed Forces.

EXHIBIT H Documented Examples and Illustrative Consequences of Military Investigative Titling Practices

This exhibit provides publicly reported examples demonstrating how investigative titling practices may produce long-lasting professional and economic consequences for service members despite the absence of criminal conviction. The examples below are drawn from open-source reporting and are included to assist congressional staff in understanding the real-world implications of current Department of Defense titling policy.

One widely reported example involves Luis Visalden, a former Army intelligence officer discussed in an October 2025 investigative report published by *The War Horse*. According to that report, Visalden became associated with the Army's recruiting-fraud investigation despite never being arrested or convicted of a crime. The article describes how titling entries connected with the investigation continued to follow affected service members during background investigations and civilian employment screening.

Another publicly reported example involves Colonel David Garcia, whose situation was described in a March 2025 media report discussing concerns raised by veterans regarding investigative record entries associated with allegations later determined to be unfounded. According to the report, Garcia believed his professional difficulties had ended after a military board determined that the allegations against him lacked evidentiary support, yet the investigative record continued to affect his career.

These publicly reported examples illustrate the broader policy concern addressed by the proposed legislative reform. Investigative entries created under the credible information standard may remain within federal investigative databases long after the underlying investigation has concluded, even where no criminal charges were filed or where the accused service member was ultimately acquitted.

An illustrative hypothetical example might be: a reserve component officer is titled at the outset of an investigation based on credible information suggesting possible misconduct. Prosecutors later decline charges after determining that the available evidence does not support criminal proceedings. Years later, the investigative entry surfaces during a background investigation conducted for civilian employment requiring security clearance eligibility, requiring the service member to explain allegations that never resulted in criminal findings. This hypothetical illustration is included solely to demonstrate how investigative indexing under the current instruction can produce downstream professional consequences.

The experiences reflected in publicly reported cases and policy analysis demonstrate that investigative titling practices may produce lasting consequences extending far beyond the investigative process itself. By establishing statutory standards governing the creation and review of permanent investigative record entries, Congress can strengthen fairness within the military justice system while preserving the effectiveness of military criminal investigations.

EXHIBIT I Authorities and Sources Supporting Legislative Reform of Military Investigative Titling Practices

This exhibit identifies the principal legal authorities, statutory provisions, and publicly available sources relevant to the investigative titling practices addressed in the proposed legislative amendment. These authorities provide the legal and policy context necessary for evaluating the need for statutory reform.

Department of Defense Instruction Governing Titling

The primary policy governing investigative titling practices within the Department of Defense is Department of Defense Instruction 5505.07, titled “Titling and Indexing by DoD Law Enforcement Activities,” issued August 8, 2023. The instruction establishes procedures governing the creation and maintenance of investigative records within Department of Defense criminal investigative organizations.

The instruction provides that DoD law enforcement activities will title and index subjects of criminal investigations when there is “credible information” indicating that the individual may have committed a criminal offense. The instruction further explains that titling and indexing are administrative investigative procedures that do not imply guilt or innocence but are intended to preserve investigative information for law enforcement purposes. *See* U.S. Dep’t of Def., DoD Instruction 5505.07, *Titling and Indexing by DoD Law Enforcement Activities* (Aug. 8, 2023).

The instruction also establishes procedures through which individuals may request review, correction, or expungement of investigative records.

Federal Statutory Authorities

Congress has historically addressed concerns regarding federal recordkeeping practices through the Privacy Act of 1974. The Privacy Act requires federal agencies maintaining systems of records to ensure that those records are “accurate, relevant, timely, and complete.” 5 U.S.C. § 552a(e)(5).

The statute further provides mechanisms through which individuals may request amendment of federal records maintained by government agencies when those records are inaccurate or improperly maintained.

Congress also possesses constitutional authority to regulate the Armed Forces and to establish rules governing military justice procedures under Article I of the Constitution. U.S. CONST. art. I, § 8, cls. 12–14.

Publicly Reported Examples of Titling Controversies

Investigative titling practices have received increasing attention in publicly available reporting concerning the long-term consequences of investigative record entries affecting service members and veterans.

One widely cited example involves former Army intelligence officer Luis Visalden, whose experience was described in a 2025 investigative report published by *The War Horse*. The report described how investigative titling connected to the Army's recruiting-fraud investigation continued to affect service members who had never been convicted of a crime. See Thomas Brennan, *Veterans Say Military "Titling" Ruined Their Lives*, *The War Horse* (Oct. 2025).

Other reporting has highlighted concerns raised by veterans regarding investigative records that continued to affect their professional opportunities even after allegations were determined to be unfounded. See, e.g., reporting concerning Colonel David Garcia and related controversies surrounding investigative record entries.

These examples illustrate broader concerns among service members, veterans' advocacy organizations, and legal practitioners regarding the long-term consequences of investigative titling practices.

Congressional Materials

Publicly available congressional materials indicate that policymakers have begun examining investigative titling practices in recent legislative discussions. A House amendment document dated August 27, 2025 includes definitions of "titling," "covered database," and "expungement," suggesting that congressional staff have already begun evaluating potential legislative responses to investigative titling procedures.

Such materials indicate that the issue has entered the policy discussion within Congress and may be appropriate for further consideration within the annual National Defense Authorization Act.

Conclusion

The authorities identified above demonstrate that investigative titling practices currently operate primarily through Department of Defense administrative policy rather than through explicit statutory standards enacted by Congress.

Given the increasing integration of investigative record systems with federal background investigation processes and the potential long-term consequences of investigative indexing, the proposed legislative amendment seeks to establish statutory standards governing the creation and review of permanent investigative records affecting members of the Armed Forces.