

CVLC and NVLSP Sue the U.S. Navy For Due Process Violations and Failure to Give Black Veterans a Fair Chance at Discharge Upgrades

- The Navy Refuses to Consider Racial Discrimination as a Basis for Discharge Upgrade Applications and Prevents Applicants from Reviewing All the Evidence -

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NEW HAVEN, Conn. -- Today, the [Veterans Inclusion Project](#) of the [Connecticut Veterans Legal Center](#), with the assistance of National Veterans Legal Services Program ([NVLSP](#)), filed a [complaint](#) in the United States District Court for the District of Connecticut on behalf of former U. S. Marine Michael Lomax. Mr. Lomax was unfairly discharged with an “Other Than Honorable” character of service due to his race, his experience of military sexual trauma, and the mental health conditions that resulted from these experiences. However, when he applied for an upgrade to an “Honorable” discharge, the Board of Corrections for Naval Records, which considers applications from the Marines, refused to consider the impact of racial bias on his mental health or disciplinary record. It also refused to share with Mr. Lomax or his counsel two “mental health advisory opinions” which it relied on in denying his application.

A veteran’s discharge status at the conclusion of service determines access to concrete benefits, such as VA healthcare, compensation, and home loans. A discharge status of “Other Than Honorable” (OTH) prejudices a veteran seeking access to these vital services, and it causes shame and stigma for those who served their country. In recent years, the Department of Defense has recognized that veterans who experienced Military Sexual Trauma (MST) and have mental health conditions such as PTSD often unfairly receive OTH discharges. The DoD has instructed each service branch to give “liberal consideration” to applicants for discharge upgrades whose claims are based on Military Sexual Trauma and PTSD. The Boards are also required to obtain an opinion from qualified mental health professionals and share those opinions with the applicant prior to a decision. Yet, the Board of Corrections for Naval Records routinely fails to share these advisory opinions, leaving veterans with no way to rebut secret evidence against their case. Additionally, the DoD has given the Boards no instructions on how to treat claims based on racial discrimination and bias in service, despite the fact that racial bias is clearly implicated in detrimental discharges for veterans of color and DoD regulations require the Boards to consider discrimination.

“I joined the Marines at 17 because I was proud to serve my country and believed that in the military I would be accepted for my good attitude and work ethic. Instead, I was shunned by my peers and disciplined by my supervisors due to the color of my skin,” says Michael Lomax. “This, coupled with the sexual trauma I experienced in the service, caused in me great shame, sadness and anger – which I now realize are the result of PTSD and Depression. It has taken me many years to come to terms with what happened to me when I signed up to serve my nation, and I hope this lawsuit will enable me to finally be able to say I am an honorably discharged Marine.

But most importantly, I hope it will help other veterans who experienced discrimination to come forward and ask the military to right their wrongful discharges.”

“The U.S. Military must take responsibility for pervasive bias against service members of color by providing meaningful redress in the discharge upgrade process,” says Alden Pinkham, Singer Fellow at Connecticut Veterans Legal Center. “While as advocates for veterans with bad paper discharges, we applaud the service branches for improving their approach to veterans with bad paper linked to mental health conditions and MST, this is not enough. The DoD must give weight to the claims of veterans like Mr. Lomax who experienced the ongoing impact of racial bias on their mental health, and those whose disciplinary record reflects discriminatory supervision.”

“Veterans like Mr. Lomax who experienced bias and discrimination in service still face the same biases from the correction boards after service,” states Renee Burbank, Director of Litigation at NVLSP. “The Navy denied Mr. Lomax an upgrade because it decided his PTSD symptoms weren’t the right kind of symptoms. The Board’s decision not only misunderstands PTSD, but, by refusing to give Mr. Lomax the opportunity to rebut the flawed opinion on which the Board relied, the Board disregarded fundamental principles of due process. Government agencies, including the military, should not decide claims based on secret evidence. Military correction boards violate both the constitution and their own regulations when they refuse to share advisory opinions with claimants. Mr. Lomax’s lawsuit will help put a stop to this unconstitutional and unlawful behavior.”

The CVLC team includes Singer Fellow Alden Pinkham and Staff Attorney for Discharge Upgrades and Policy Counsel Millie VandenBroek.

The NVLSP team includes Director of Litigation Renee Burbank.

About Connecticut Veterans Legal Center

The Connecticut Veterans Legal Center (CVLC) was founded in 2009 as the United States’ first medical-legal partnership with the Veterans Health Administration. CVLC works with clinicians to help veterans recovering from homelessness and mental illness overcome legal barriers to housing, healthcare, and income. Much of CVLC’s practice focuses on veterans who unjustly received less-than-honorable discharges, providing them representation both before the military review boards as well as VA. CVLC is nationally recognized for its work on discharge upgrades and character of discharge determinations (CODs), including co-authoring the [Military Discharge Upgrade Legal Practice Manual](#) and regularly presenting at national trainings on discharge upgrades and CODs.

About NVLSP

The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit veterans service organization that has served active duty military personnel and veterans since 1981. NVLSP strives to ensure that our nation honors its commitment to its 22 million veterans and active duty personnel by ensuring they have the benefits they have earned through their

service to our country. NVLSP has represented veterans in lawsuits that compelled enforcement of the law where the VA or other military services denied benefits to veterans in violation of the law. NVLSP's success in these lawsuits has resulted in more than \$5.2 billion dollars being awarded in disability, death and medical benefits to hundreds of thousands of veterans and their survivors. NVLSP offers training for attorneys and other advocates; connects veterans and active duty personnel with pro bono legal help when seeking disability benefits; publishes the nation's definitive guide on veteran benefits; and represents and litigates for veterans and their families before the VA, military discharge review agencies and federal courts. For more information go to www.nvlsp.org.

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