DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[redacted]
Docket No. 4481-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO FORMER [redacted], USN, XXX-XX-[redacted]

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl:[1] (23) DD Form 149 w/attachments
(24) BCNR Mem[redacted]ocket No. 6289-21, subj: Review of Naval Record ICO [Petitioner], 22 March 2022
(25) USNA SJA Memo, subj: Request for Advisory Opinion ICO [Petitioner], BCNR Docket No. NR20220004481, 17 August 2022
(26) Petitioner's Letter, 9 October 2022
(27) BCNR Memo Docket No: NR20220004481, subj: Advisory Opinion ICO [Petitioner], 11 October 2022
(28) Petitioner's Letter, 11 October 2022
(29) Petitioner's USNA Roommate Letter, RE: Support Records Correction for [Petitioner], 6 September 2021

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (23) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting full waiver of his remaining educational debt. Enclosure (23) is a request for reconsideration of the Board's denial of his request for waiver or reduction of his remaining educational debt in Docket No. 6289-21.[2] See enclosure (24).

2. The Board reconsidered its decision in Docket No. 6289-21 in light of the new material presented by Petitioner on 19 October 2022 and, pursuant to its regulations, continued to find that no corrective action is warranted.[3] Documentary material considered by the Board included the case file for Docket No. 6289-21; the enclosures, to include those to the decision document

1 Enclosures (1) – (22) to the decision document for Docket No. 6289-21 are adopted and incorporated by reference herein.
[2] The new materials supporting this reconsideration request are Petitioner's novel arguments that he was the victim of racial, ethnic, religious, or some other form of discrimination and prejudice, both while at the USNA and by this Board in its previous decision.
[3] The three Board members who considered Petitioner's present request for reconsideration were different than the members who considered Petitioner's request for relief in Docket No. 6289-21.

for Docket No. 6289-21 which have been incorporated by reference herein; relevant portions of Petitioner's naval records; and applicable statutes, regulations and policies.

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy (DON).

b. The factual background of this case reflected in paragraph 3 of enclosure (24) is adopted and incorporated by reference herein.

c. On 8 February 2022, the Board unanimously recommended in Docket No. 6289-21 that Petitioner's previous request for waiver or reduction of his remaining educational debt be denied. In making this recommendation, the Board found no error or injustice in the process by, or the substance for which Petitioner was disenrolled from the United States Naval Academy (USNA), and that Petitioner had personally elected the option of monetary recoupment of his educational expenses in lieu of active duty service to satisfy his service obligation. The Board rejected Petitioner's contention that he received ineffective assistance of counsel during his disenrollment proceedings; found that Petitioner's mental health condition(s) did not warrant relief; and determined that equitable relief was not warranted given the totality of the circumstances in accordance with reference (b). See enclosure (24).

d. On 11 April 2022, the Acting Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) approved the Board's recommendation in Docket No. 6289-21. See enclosure (24).

e. On 17 June 2022, Petitioner submitted the present request for reconsideration of Docket No. 6289-21, based upon the racial, ethnic, religious, or some other form of bias discrimination that he endured while at that USNA and by this Board based upon its decision in Docket No. 6289-21. He asserts that "the persistent pattern of discriminatory, biased treatment through [his] separation and beyond is obvious."

(1) Petitioner asserts several incidents of prejudice against him while at USNA. Specifically, he implied that his leadership opportunities at USNA were inappropriately limited despite his relatively high class standing; described several actions taken by his USNA leadership which he attributes to their bias; and asserts that he overheard an unidentified duty officer refer to him as a "dumb gangster mid" in the context of describing his misconduct, which he characterized as racist stereotype associated with his Hispanic ethnicity. Petitioner also attributed the bad advice that he received during his separation process to prejudice,[4] and now attributes the limitation placed upon his ability to reenlist to discrimination. Finally, Petitioner claims that the advice he received from the USNA Commandant to "think about where [he would] go and what [he would] do" after his conduct hearing to be evidence of bias.

[4] Petitioner asserts that he was advised to plead guilty during the internal investigation without first clearing his name in criminal court, "likely due to prejudice of a racial, ethnic or other nature in [his] case by ethnically white Naval and Marine officers and senior Navy enlisted personnel."

(2) Petitioner also asserted that the Board discriminated against him racially, ethnically, religiously, or by some other form of bias based upon the "emotional language used in the decision [for Docket No. 6289-21], criminal accusations, erroneous accusations, character implications, and overall disposition of the decision." Specifically, he asserts that Docket No. 6289-21 was adjudicated much faster than the 10-18 months indicated at the outset of his application, and that "the rushed adjudication" left him with "little time to seek more experienced counsel for representation upon initial rejection and indicating a bias with [his] case." He also cites several allegedly "wild, unsubstantiated accusations of felonious conduct, without any supporting charges or convictions of any crimes from the state of Maryland" in the Board's decision as evidence of the Board's bias.[5] In the context of accusing the Board of bias,

[5] The examples from enclosure (24) cited by Petitioner as evidence of the Board's bias were as follows:

(1) On page 7 of enclosure (24), the Board stated that Petitioner "nearly killed another midshipman with his inexcusable conduct." In attempting to demonstrate the unfounded nature of this statement, he asserts that no one was hospitalized and the vehicle that he was driving drunk was "in a low speed collision with a curb on an offramp late at night with no other vehicles or people present and more than likely due to faulty rear brakes on the vehicle due to recall." He asserts that the Board's finding in this regard "is tantamount to a charge of attempted murder, manslaughter, threatening or brandishing and no charges of this sort were ever filed by the state of [redacted] nor do they represent the reality of the situation."

(2) On page 9 of enclosure (24), the Board stated that Petitioner's conduct "did not warrant the gift of more than three years of high-quality education and college credit … at taxpayer expense." Petitioner asserts that this statement demonstrates the Board's bias and discrimination relative to other separated midshipmen of different ethnicity, religion, or other factors who have had their debts waived.

(3) On page 8 of enclosure (24), the Board described Petitioner as "clearly and intelligent and articulate person" in the context of addressing his claim of ineffective assistance of counsel, since the written guidance that he personally acknowledged regarding his obligation to repay his educational expenses was not ambiguous. Petitioner contrasts this description of him with the Board's previous description of his claim to have relied upon invalid guidance regarding his obligation as "absurd" to suggest that the Board questioned his motivation to reenlist.

(4) On page 9 of enclosure (24), the Board stated that "the evidence reflects that both the Defense Finance and Accounting Service (DFAS) and the U.S. Department of the Treasury have bent over backwards to accommodate Petitioner's financial situation," contrary to Petitioner's contention, in the context of its analysis of the totality of the circumstances to determine whether equitable relief was warranted. Petitioner contends that "no one has ever answered who has authority to adjudicate this matter and DFAS has used subcontractors to determine this arbitrary collection on more than one occasion by their own admission."

(5) On page 9 of enclosure (24), the Board stated that "[t]o grant the relief requested by Petitioner under these circumstances would be very unfair to countless other former midshipmen who have repaid their debt through either enlisted active duty service or monetary recoupment, many of whom were separated under far less egregious circumstances than was Petitioner." Petitioner asserts that this statement reflects the Board's bias against him, as "countless midshipmen have also had their debt waived for various circumstances (professional athletes, wrongfully accused, death of parents, etc.)" He demands that the Board "[e]ither include their circumstances as precedent or do not make a blind inference that is discriminatory by a racial, ethnic, religious, or other standard."

(6) Petitioner also asserted that the words "less egregious" from example #5 above "is racially ambiguous language and many midshipmen have been separated and had their debt waived for more egregious conduct, another discriminatory inference made by the representative of the Board that appears to be discriminatory ethnically, racially, religiously or by some other form."

Petitioner also claims some violations of his due process rights in the Board's decision for Docket No. 6289-21.[6]

In addition to alleging that both USNA and the Board were biased and discriminated against him, Petitioner also asserted that his debt was time barred, and that it was a violation of federal law to transfer it to the Department of the Treasury. He further asserted that DFAS never provided him the opportunity to enter into a written agreement to establish a schedule to repay the debt, in violation of 5 U.S.C. § 5514. Finally, Petitioner reiterates the harm that this debt creates for his family.

See enclosure (23).

f. By memorandum dated 17 August 2022, the USNA Staff Judge Advocate (SJA) provided an advisory opinion (AO) for the Board's consideration. After reviewing all of the available records, he found that the decision to recommend Petitioner's disenrollment was appropriate and legally sound, and made after a thorough and careful review of all of the evidence by both the USNA Superintendent and Commandant. The AO noted that Petitioner was afforded multiple opportunities throughout his misconduct and disenrollment proceedings to raise issues of alleged prejudice, discrimination, and/or improper legal advice had he wished to do so, and that any such

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(7) On page 7 of enclosure (24), the Board stated its opinion that, "under the circumstances Petitioner was fortunate to have received an honorable discharge from the Navy, as his conduct did not warrant such a favorable consideration." Petitioner asserts that the conditions of his separation clearly warranted an honorable discharge or he would not have been granted one. Further, he asserts that he might still have been commissioned if not for the bad advice he received to plead guilty. Petitioner asserts that "[t]he Board's retrospective ruling on a court martial that never occurred is not relevant to this case and is discriminatory religiously, ethnically, racially or by some other nature."

(8) On page 9 of enclosure (24), the Board concluded its findings with the statement that "equitable relief to remove some or all of Petitioner's educational debt is clearly not warranted under the totality of the circumstances." Petitioner asserts that this finding "is not clear because there is no standard and cases are handled individually based on the makeup of the board and other factors by which no one is aware, indicating a bias of racial, ethnic, religious or other nature."

[6] The examples from enclosure (24) cited by Petitioner as due process violations were as follows:

(1) On page 7 of enclosure (24), the Board stated that it did not find Petitioner's contention that he "was unaware of the presence of [a] firearm" in the vehicle to be credible, as the contemporaneous evidence from his administrative conduct hearing revealed that he brandished the loaded weapon in a joking manner with the midshipman who was in his vehicle." Petitioner suggests that this finding reflects the Board's bias, as the evidence clearly indicated that he was unaware of the firearm when it was shipped but was aware of it after it arrived. He further asserted that his father was a Jewish man who had relatives killed in the holocaust, and that he kept weapons in every vehicle he owned, including the vehicle in question.

(2) On page 8 of enclosure (24), the Board found that certain evidence relied upon by Petitioner to prove his mental health symptoms did not establish that those symptoms predated his disenrollment. Petitioner asserts that the Board ignored a statement from his USNA roommate, who is now a board certified physician, and a 2012 statement from a psychologist (which happened to be the evidence that the Board was referring to). He also questions the Board's ability to ignore the evidence he presented and to offer "a likely unqualified opinion on the matter."

(4) Petitioner asserts that examples 3-7 in footnote 5 above represent due process violations in addition to examples of the Board's bias.

issues would have been thoroughly investigated had he reported them. While Petitioner now, 14 years later, claims to presume that the decision to disenroll him was influenced by bias and discrimination, the objective evidence does not support that assumption. To the contrary, Petitioner was disenrolled after he committed serious misconduct and exhibited such poor judgment that it was determined he should not be commissioned as a naval officer with the associated responsibility for the lives and welfare of future subordinates. Accordingly, the USNA SJA recommended that Petitioner's request for relief be denied, describing the new matters alleged by Petitioner to be "specious and suspect at best." See enclosure (25).

g. On 9 October 2022, Petitioner provided a rebuttal to the USNA SJA AO described above. In addition to reiterating the same arguments made in enclosure (23), he asserted that the USNA SJA is inherently biased in that he is required to defend USNA and all its officers, and that this inherent bias resulted in a failure to properly analyze the new evidence and a total disregard for his mental health and discrimination. He further asserted that the USNA SJA is not an expert on mental health, discrimination, or on whether his sworn statements are permissible in a court of law. See enclosure (26).

h. Based upon his repeated assertion that the Board was not qualified to assess his mental health, Petitioner's application and records were referred to a licensed clinical psychologist on the Board's staff. After reviewing all of the evidence, this licensed clinical psychologist provided an AO for the Board's consideration which found insufficient evidence of a diagnosis of post-traumatic stress disorder (PTSD) or another mental health condition that may be attributed to military service, or that Petitioner's misconduct could be attributed to PTSD or another mental health condition. Specifically, the AO found that "it is difficult to attribute [Petitioner's] misconduct to a mental health condition, as he has repeatedly claimed that the misconduct was an isolated incident, rather than evidence of a mental health condition or substance use disorder." See enclosure (27).

i. By letter dated 11 October 2022, Petitioner provided a rebuttal to the mental health AO discussed in paragraph 3h above. Specifically, he stated that the AO is irrelevant and should be disregarded by the Board because the author was not at USNA in 2008, is not a licensed psychiatrist, and has never seen him in a clinical setting. He asserts that this AO cannot be considered more reliable than the statement provided by a board-certified physician who knew him during the period in question or that of a mental health professional who did see him in a clinical setting. In support of this contention, Petitioner provided a copy of the statement from Petitioner's USNA roommate, who is now a psychiatrist serving on active duty at [redacted] National Military Center, and from the licensed clinical psychologist who treated Petitioner from 2012 to 2015.[7] See enclosure (28).

[7] Both of these statements were considered by the Board in Docket No. 6289-21, and presumably considered by the Board's licensed clinical psychologist in rendering her AO. Petitioner also included a sworn statement attesting that he had requested alcohol treatment in 2007, but that his request was denied by the same senior enlisted advisor who had had previously accused of bias.

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board continues to find insufficient evidence of any error or injustice warranting relief.

The Board did not address Petitioner's contention that his debt was time barred, or that it was a violation of federal law for DFAS to transfer it to the Department of the Treasury. It also did not address Petitioner's contention that DFAS never provided him the opportunity to enter into a written agreement to establish a schedule to repay his debt. This Board is an instrument of the DON, and has no purview over the actions of DFAS, which is an independent agency of the Department of Defense. If Petitioner's debt is, in fact, time barred, then he does not need for this Board to provide him relief. That, however, is a matter for DFAS to address. In any case, the Board does not believe that the passage of time since Petitioner's debt was assigned would weigh in his favor from an equitable point of view, as such delay is attributable to Petitioner alone.

The Board carefully reviewed Petitioner's previous application and the Board's decision in Docket No. 6289-21. Based upon this review, the Board concurred with the findings and recommendation in Docket No. 6289-21, even in light of the new material presented by Petitioner in his present request for reconsideration. As discussed further below, the Board found no evidence to support Petitioner's contention that the Board's decision in Docket No. 6289-21 was influenced by racial, ethnic, religious, or any other type of bias. Accordingly, the Board adopts the conclusions of Docket No. 6289-21, and incorporates them by reference herein.

Petitioner's contention that the Board was not qualified to comment upon his mental health conditions is without merit. As Petitioner asserted his mental health as a basis for relief, it is the Board's responsibility to address it. The Board did so in Docket No. 6289-21, rationally explaining why the evidence provided by Petitioner was insufficient to provide relief. As discussed in enclosure (24), the evidence presented by Petitioner with regard to his mental health conditions was not convincing. First, this issue was not even raised in Petitioner's original application to this Board. Petitioner first raised his mental health conditions as a factor warranting relief in his rebuttal to an AO received in Docket No. 6289-21, only after retaining new counsel and not in response to any assertion made in the AO. The timing of this claim, both in relation to the application and to the assignment of debt, is a factor which logically weighed upon the credibility of Petitioner's claim in this regard. Next, the Board relied on Petitioner's own words to find that Petitioner's mental health conditions were likely the result of his misconduct, and not the reason for it. In enclosure (20), Petitioner expressed to DFAS that his "poor decision has caused major anxiety, stress, and enduring depression symptoms." Besides the fact that Petitioner's own words supported the Board's findings, the evidence provided by Petitioner was not nearly as convincing as he portrays it to be. Enclosure (15) was a letter from his former treating licensed clinical psychologist, which merely stated that Petitioner presented for treatment with symptoms of depression, anxiety, and substance use/abuse after his separation from the Navy, and that progress was being made in this treatment until Petitioner's relocated. It said nothing about the cause of Petitioner's symptoms, or whether they may have contributed to the misconduct for which he was separated.[8] The letter from his USNA roommate (enclosure

[8] Ironically, Petitioner asserts that enclosure (27) should be ignored in part because its author was not a psychiatrist, but enclosure (15) was signed by Petitioner's own clinical psychologist.

(29)) opined, in hindsight, that Petitioner suffered from a condition called "anhedonia" while he was a midshipman,[9] and that he turned to alcohol to with his depression and anxiety when he came of age. Even putting aside the reliability of this "evidence" which was not signed by his former roommate and bore a watermark stating that it was a "draft," the Board clearly explained in Docket No. 6289-21 that there was an insufficient nexus between Petitioner's alleged mental health symptoms and the misconduct which resulted in his disenrollment. "While such conditions may explain or mitigate excessive drinking, they do not mitigate a DUI which endangered a fellow midshipman and untold numbers of people on the road between [redacted] and [redacted] or brandishing a loaded weapon while doing so."[10] This Board continues to find that Petitioner's mental health conditions do not warrant relief in this case.

Petitioner's claim that he was the victim of racial, ethnic, religious, or some other type of bias-based discrimination while he was at USNA is not supported by the evidence. The only evidence supporting these claims was Petitioner's own sworn statement, which the Board found to be of questionable credibility for the same reasons that the Board in Docket No. 6289-21 doubted Petitioner's credibility. In this regard, the Board found it noteworthy that Petitioner was purportedly able to procure a statement from his USNA roommate, albeit unsigned and bearing "draft" watermark, attesting to Petitioner's reliance upon alcohol to cope with his depression and anxiety, but could not do so to attest to the "long history of discrimination" by their Company Officer that he described in the sworn statement attached to enclosure (23) and which he swore that his roommate could attest to.[11] The Board also noted that this was the first time, after numerous attempts to escape the burden of the valid debt that Petitioner himself elected, that Petitioner has raised the specter of any bias or discriminatory motive for his disenrollment from USNA more than 14 years after the fact. He did not raise it during the conduct proceedings at USNA. He did not raise it in his matters to the SECNAV to influence the decision of whether he should be disenrolled. He did not raise it in any of his several efforts to extinguish the debt through DFAS or the Department of the Treasury. Finally, he did not raise it in either of his previous applications to this Board. Even assuming, arguendo despite the absence of any credible evidence, that the incidents described by Petitioner actually occurred, Petitioner provided no evidence whatsoever that they were motivated by any racial, ethnic, religious, or any other type of bias.[12] He simply makes the unsupported assumption that they were so motivated for no reason other than that the actors were aware of his Hispanic and Jewish status. Absent any credible support for these assertions, the Board found it much more likely that any discrimination that Petitioner experienced was due to his status as a disgraced midshipman charged with DUI rather than due to any racial, ethnic, religious, or other type of bias. Additionally, while Petitioner attributes discriminatory bias to the actions of certain officials at USNA, he did not do so for any of the officials who mattered. Petitioner's Company Officer and Senior Enlisted Advisor did not make the decision on Petitioner's disenrollment from the USNA.

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[9] Anhedonia is an inability to experience pleasure from activities usually found enjoyable.

[10] Petitioner asserts that the passenger in his vehicle when he drove drunk and brandished a weapon was not a "midshipman," suggesting that the Board decision in Docket No. 6289-21 was erroneous. While Petitioner may believe there to be relevance in the proper title of a USNA foreign exchange student, this Board does not.

[11] Petitioner did not provide a statement from his USNA roommate to this effect. Rather, he provided his own sworn statement attesting that his USNA roommate could attest as such.

[12] The Board rejects Petitioner's unsupported contention that the reference to "that dumb gangster mid[shipman]" was a stereotypical reference to his Hispanic ethnicity. It was far more likely a stereotypical reference to a midshipman who brandishes a weapon while driving drunk.

Neither did the unnamed duty officer who reportedly described Petitioner as "that dumb gangster mid[shipman]." The decisions in Petitioner's case were made by the USNA Commandant and Superintendent, and ultimately approved by the ASN (M&RA) based upon their recommendations.[13] Petitioner provided no evidence to suggest that any of these individuals discriminated against him due to any type of bias.[14] Finally, even if Petitioner experienced bias and discrimination while at the USNA, he provided no evidence to suggest that the decision to disenroll him from USNA or to require him to monetarily repay his educational debt was motivated by any such bias. Petitioner was disenrolled and assigned a reenlistment code which required a waiver to reenlist due to his own serious criminal activity, to which he admitted during his conduct hearing. He was required to monetarily repay his educational debt pursuant to his own election, and because it was not in the best interest of the DON to voluntarily bring into the fleet an individual who engaged in the type of conduct engaged in by Petitioner. The only type of discrimination which contributed to Petitioner's current situation is the discrimination against egregious misconduct of the type engaged in by Petitioner, which is necessary to maintain good order and discipline in the military.

This Board finds no evidence that the Board's decision in Docket No. 6289-21 was influenced by any racial, ethnic, religious, or any other type of bias. In this regard, the Board notes that the three members of the present Board who unanimously found that relief is not warranted are different than the three members who unanimously found the same in Docket No. 6289-21. The Board's relatively quick resolution of Docket No. 6289-21, which Petitioner attributes to bias, was the result of the Board's recently improved business processes. The five months that it took from Petitioner's submission of his application on 6 September 2021 until the Board unanimously found that relief was not warranted on 8 February 2022 is actually longer than the average time it now takes the Board to resolve such claims.[15] The Board also finds nothing in the content of the decision memorandum for Docket No. 6289-21 to support Petitioner's claim of racial, ethnic, religious, or any other type of bias. First, there was nothing in the record which would have informed the Board of Petitioner's ethnicity or religion. In order to discriminate against Petitioner due to his race, ethnicity, or religion, the Board would have had to have known of his race, ethnicity, or religion, and those are not consideration readily available to Board members. Next, the language used in the decision was not emotional, and did not include any criminal or erroneous accusations or character implications. The language used in the decision document for Docket No. 6289-21 was certainly direct and thorough, but that was a product of the Board's requirement to clearly explain the rationale for its decision in accordance with the Administrative Procedures Act and not the result of any bias or discrimination. Unfortunately,

[13] The Board dismissed as frivolous Petitioner's contention that the "bad advice" he received at USNA regarding his conduct proceedings were motivated by some type of bias. The Board already addressed the sufficiency of this advice in Docket No. 6289-21, rejecting Petitioner's contention of ineffective assistance of counsel. Considering that there were witnesses to the amount of alcohol consumed by Petitioner, including a fellow midshipman who was a passenger in the car, Petitioner's assertion that he likely would have escaped any consequences for his misconduct but for the advice he received to throw himself at the mercy of the board lacks credibility.

[14] The Board categorically rejected Petitioner's contention that the Commandant's comment following his conduct hearing that he should "go somewhere and think about [his] future" constituted any bias or discrimination against him. Such statement was simply sage advice for any midshipman who engaged in such egregious conduct.

[15] The reference to "10-18 months" for resolution of applications that applicants are notified of upon submission of applications for relief is a reference to the Board's statutory timelines in 10 U.S.C. § 1557, and intended as a notice that applications may, not will, take that long to be resolved.

Petitioner's conduct was of such an egregious nature, and Petitioner's arguments for relief so specious, that it was impossible to explain the Board's rationale in a manner favorable to Petitioner. There was also nothing inaccurate in the decision document. The Board relied only upon the misconduct that Petitioner admitted to during his conduct hearing. Further, there was nothing inaccurate in suggesting that Petitioner "nearly killed another midshipman." This statement accurately describes the act of getting into a traffic accident while driving drunk, and in no way implies an accusation of attempted murder or manslaughter as Petitioner suggests. The fact that divine providence intervened to ensure that no one was harmed by Petitioner's egregious acts does not change the nature of those acts, and Petitioner's current efforts to minimize the nature of his conduct based upon the outcome merely confirms the wisdom of USNA leadership in denying him a commission. Petitioner further asserted, without merit, that the language used in the decision document for Docket No. 6289-21 to express why equitable relief was not warranted demonstrated the Board's bias and discrimination. This Board is unaware of other cases in which it has granted the extraordinary relief requested by Petitioner under similar circumstances. He suggests that the Board has done so in the past to suggest the Board's bias, but neglects to provide any such examples for comparison. Given the egregious nature of Petitioner's misconduct, the Board finds it highly unlikely that Petitioner can identify a similar case in which it has granted such relief. Certainly the Board would reconsider its decision if the Petitioner provides such an example for comparison. In summary, the only bias demonstrated by the Board in Docket No. 6289-21, which was applied by the present Board as well, was the bias in favor of the appropriateness of the actions taken by naval officials with regard to Petitioner's disenrollment from USNA and requirement to repay his educational debt. This was not a bias motivated by racial, ethnic, religious, or any other type of discrimination, but rather by the Board's regulatory requirement to apply the presumption of regularity in the absence of evidence to the contrary. The Board denied relief because Petitioner failed to prove the existence of any error or injustice warranting relief, and not because of his Hispanic and/or Jewish heritage.

The Board again considered the totality of the circumstances to determine whether equitable relief was warranted in the interest of justice in accordance with reference (b). As the Board found no merit in any of Petitioner's contentions in his present request for reconsideration, the circumstances continue not to warrant such extraordinary relief.

RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

Subj: REVIEW OF NAVAL RECORD ICO FORMER [redacted], USN, XXX-XX-[redacted]

5. The foregoing action of the Board is submitted for your review and action.

11/21/2022

[redacted]
Executive Director

ACTING ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) DECISION:

Board Recommendation Approved (Deny Relie[redacted]

Petitioner's Request Approved (Grant Relief – I hereby waive the entirety of Petitioner's educational debt.)

Petitioner's Request Partially Approved (Partial Relief – I hereby waive $_____ of Petitioner's remaining educational debt.)

[redacted]
Acting Assistant Secretary of the Navy
(Manpower and Reserve Affairs)