

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20230011536

APPLICANT REQUESTS: through counsel, removal of his name and identifying information from the Department of Defense (DOD) Central Investigations Index (DCII) and all reports of investigation for allegations of aggravated sexual contact (Article 120) and assault (Article 128) of the Uniform Code of Military Justice (UCMJ).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552) (listed as exhibit 9)
- Counsel's Brief in Support of Application for Correction of Records, 18 July 2023, with exhibits –
 - Exhibit 1 – Power of Attorney, 22 March 2021
 - Exhibit 2 –
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 July 2010
- DD Form 215 (Correction to DD Form 214), 26 January 2012
- Exhibit 3 – U.S. Army Transportation School and Fort Eustis General Court-Martial Order Number 8 (Corrected Copy), 4 August 2010
- Exhibit 4 – [REDACTED] Law Enforcement Division Letter, 4 March 2021
- Exhibit 5 – U.S. Army Criminal Investigation Command (CID) Records (78 pages), including the following documents –
 - two DA Forms 4833 (Commander's Report of Disciplinary or Administrative Action), 18 December 2009 and 1 February 2010
 - DA Form 3975 (Military Police Report), 26 February 2009
- Exhibit 6 – CID Letter, 11 July 2023
- Exhibit 7 – DD Form 2707 (Confinement Order), 17 December 2009
- Exhibit 8 – DD Form 2707, 18 December 2009
- Exhibit 9 – DD Form 149 (listed above)

FACTS:

1. The applicant defers to counsel.

2. Counsel states:

a. The applicant believes he was wrongfully titled or indexed in the DCII because there was no probable cause to title him or believe he committed the crimes for which he was titled. He submits an appeal for review and requests removal of his name and identifying information from the DCII and all reports of investigation.

b. The applicant feels there was not enough evidence to support his conviction, which created an error and injustice, as supported by a preponderance of the evidence in the provided exhibits. This is his first petition to the Board, and he has exhausted all administrative remedies.

c. Counsel cited the following as facts:

(1) The applicant applied to [REDACTED] Law Enforcement Division for a concealed weapons permit. His request was denied on 4 March 2021 for being convicted of a crime punishable by imprisonment for a term exceeding 1 year or a misdemeanor conviction punishable by imprisonment for more than 2 years (see exhibit 4).

(2) The corrected copy of U.S. Army Transportation School and Fort Eustis General Court-Martial Order Number 8 (see exhibit 3), 4 August 2010, shows the applicant was found guilty of violating Article 93 (Cruelty and Maltreatment), but all other charges were dismissed. This was the result of the law enforcement investigation and not a legal adjudication. Cruelty and maltreatment of subordinates have no equivalent to civilian penal code and do not carry imprisonment terms over 1 year. He was titled for charges, not convictions, under Articles 120 (Rape and Sexual Assault Generally) and 128 (Assault). The sentence was adjudicated on 17 December 2009, he was reduced from command sergeant major/E-9 to master sergeant/E-8, and he was confined for 3 months.

(3) The DA Form 4833, 1 February 2010 (should read 26 February 2010), incorrectly shows a finding of guilty for aggravated sexual contact, assault, and cruelty of subordinates (see exhibit 5); however, this was not the final adjudication. A second DA Form 4833, 19 May 2010 (should read 19 April 2010), shows no guilty findings. Section 10a (Commander's Remarks) notes: "Migrated Data [DA Form] 4833 Version 1 – Judicial Finding Other. Migrated Data [DA Form] 4833 – No Action Taken Reason: NOT ENOUGH EVIDENCE TO SUPPORT A CONVICTION" (see exhibit 5).

(4) The DA Form 3975, 26 February 2009, section VII (Narrative), shows he was found guilty of maltreatment of troops (see exhibit 5). There was an error on the DD Form 2707, 17 December 2009, as it originally showed he was convicted of violating Article 120 (see exhibit 7). A second DD Form 2707, 18 December 2009, corrected his conviction and did not include Article 120, only Article 93 (see exhibit 8).

(5) On 11 July 2023, CID denied removing the titling action based on "probable cause to believe he committed the offense for which he was titled" (see exhibit 6). CID provided no explanation of how this conclusion was reached. The only item CID discussed was the unsupported allegations that "he fondled a junior female Soldier's breast and vagina and kissed her against her will and without her consent," which were not factually correct (see exhibits 3 and 6). These allegations were ultimately dismissed by the prosecutor.

d. Counsel states the applicant was accused of cruelty and maltreatment of subordinates, assault, and sexual assault. However, he was found guilty of only cruelty and maltreatment; the other two charges were dismissed. There is no probable cause that he committed assault or sexual assault; however, he was still titled for these actions. The applicant was found guilty of cruelty and maltreatment of subordinates, yet this article under the UCMJ is not a crime under the civilian penal law. Therefore, he never should have been titled for assault and sexual assault. There was no probable cause and there still exists no probable cause that he committed assault or sexual assault. The applicant's record must be cleared of the actions for which he was titled based on Public Law 116-283, and the Fiscal Year 2023 National Defense Authorization Act. The Army changed the standard for titling from credible evidence to probable cause and the applicant's titling does not meet the probable cause standard.

e. Counsel argues that the DOD policy is somewhat unrealistic, Individuals who have been titled and indexed experience problems acquiring a security clearance or applying for a job. In fact, titling actions are appearing on FBI criminal background checks, which gives the perception that an individual such as the applicant committed and was found guilty of a criminal act. In this case, he was never found guilty of any crime associated with assault or sexual assault. He was guilty of cruelty and maltreatment of subordinates, which is not a crime under the civilian penal law.

f. The Fiscal Year 2023 National Defense Authorization Act, section 538, states titling actions may not be removed for three reasons: (1) endanger a witness or victim; (2) disclose intelligence; or (3) compromise any ongoing investigation. The applicant is not a threat to his accuser; he has retired and moved to another state. He has not seen his accuser since before retiring. There is no classified information or intelligence matters related to his case. The investigation was closed years ago and there are no ongoing matters.

g. Counsel concludes that the investigation showed there was no probable cause for finding the applicant guilty of violating Article 120 or 128. A review of his file shows there was not enough evidence to support the charges of sexual assault and assault. He did not receive any nonjudicial punishment for those charges because there was not enough evidence to support a conviction.

3. The DD Form 3975, 26 February 2009, names the applicant as the subject/suspect for the offense of Aggravated Sexual Contact (Article 120) under the UCMJ.

a. Section VII (Narrative) states:

At 1745 hrs [hours], 20090219 [19 February 2009], CID provided the following initial report.

Preliminary investigation revealed the victim was sexually assaulted by the subject while she was assigned as his assistant. The victim stated she was in her office preparing for an enlisted promotion board when the subject entered her office, while she was dressed in only physical training shorts and a sports bra, pulled her to him and fondled her in a sexually suggestive manner without her consent. The victim further stated during the same time period the subject approached her nearly every day and kissed her without her consent. On 17 Feb[ruary] [20]09, the victim reported this incident to her unit victim advocate who encouraged her to report it to the appropriate agency.

On 18 Feb[ruary] [20]09, the subject was advised of his legal rights which he initially waived and would not confirm or deny the incident occurred. The subject invoked his right to counsel prior to providing a statement; subsequently the interview was terminated.

The subject and victim did not have a prior sexual relationship.

A general court martial was convened and found the subject guilty of maltreatment of troops and wrongful kissing and sexually suggestive comments. The subject was sentenced to reduction in rank to E-8 and confinement for 3 months. This is a final report.

No report on actions taken. Batch closure per OPMG [Office of the Provost Marshal General] Policy_2013.

b. The CID Form 94 (Agent's Investigation Report), 16 April 2009, shows the applicant was reported to have sexually assaulted Sergeant (SGT) (Redacted) on 18 February 2009. The details state:

At 1000 hours, 18 Feb[ruary] [20]09, Special Agent (SA) [Redacted] interviewed Investigator (INV) [Redacted] and INV [Redacted] both of the 233rd MP [Military Police] Detachment, 150 Ingalls Road, Building 87, Fort Monroe, VA, who stated SGT [Sergeant] [Redacted] reported to them she was sexually assault[ed] by [Applicant]. SGT [Redacted] stated she was selected by [Applicant] to do clerical work for him from March-May [20]08, at which time he started to sexually harass her by touching, making comments, and kissing her on a daily basis. Around May [20]08, during a Class-A Inspection for a promotion board, [Applicant] instructed SGT [Redacted] to change into her Class-A uniform. SGT [Redacted] went to her office and began to change into her Class-A uniform behind closed doors, when the door adjacent to [Applicant's] and her office was open[ed] by [Applicant]. SGT [Redacted] was dressed only in PT [physical training] shorts and a sport bra when [Applicant] entered the room. [Applicant] stated he wanted to help her prepare for the promotion board. [Applicant] slid his hands into SGT [Redacted's] PT shorts and touched her crotch area. SGT [Redacted] immediately removed his hand from her shorts with her hand. At that point, [Applicant] stated to SGT [Redacted] "Why do you protect what's between your legs? Why do you care?" Afterwards SGT [Redacted] stated to the MPI [military police investigator], she was removed from the clerical position and returned to her unit. SGT [Redacted] contacted the unit Equal Opportunity (EO) representative in Feb[ruary] [20]09, who then contacted the MPI.

About 1330, 18 Feb[ruary] [20]09, SGT [Redacted] provided a sworn statement wherein she stated [Applicant] sexually assaulted her in her office on or about 1 May [20]08.

About 1441, 18 Feb[ruary] [20]09, [Applicant] was advised of his legal rights, which he initially waived. When questioned, [Applicant] neither denied nor confirmed the alleged assault. When asked about his activities or interactions with SGT [Redacted], [Applicant] would instead redirect the line of questioning to how bad the 233rd MP Det[achment] was, and all the problems associated with the unit. When [Applicant] did mention anything about SGT [Redacted] he would talk about how he thought she needed to go to the Alcohol and Substance Abuse Program. [Applicant] stated he could not stand to be around SGT [Redacted], because she came to work drunk, and he would leave work to get away from her. [Applicant] stated he told SFC [Sergeant First Class] [Redacted] he wanted a different Soldier, but SFC [Redacted] convinced him to give SGT [Redacted] another chance. [Applicant] stated he believed SGT [Redacted] needed to go to the mental hospital.

Agent's Comment: About 1520, 18 Feb[ruary] [20]09, [Applicant] invoked his rights to legal counsel and refused to be questioned any further or say anything else.

About 0830, SA [Redacted] and SA [Redacted] processed the crime scene at Room 110, Building 77, Fort Monroe, VA.

About 0900, 27 Feb[ruary] [20]09, SA [Redacted] and SA [Redacted] interviewed Ms. [Redacted] Human Resources Clerk, Building 82, Fort Monroe, VA who stated she does not recall anything significant happening at the May promotion board. Ms. [Redacted] stated she does these boards every month and they seem to blend together. Ms. [Redacted] provided a copy of the Memorandum for the promotion board and the promotion packet for SGT [Redacted] who was known as SGT [Redacted] at the time.

About 1604, 3 Mar[ch] [20]09, SA [Redacted] interviewed 1SG [First Sergeant] Headquarters Supreme Alliance Commander Atlantic, Norfolk, VA, 23510 who stated he recalled the 29th Apr[il] [20]08, promotion board and it only stood out because he later found out SGT [Redacted] was [Applicant's] secretary. 1SG [Redacted] did not recall any specific details from the board. 1SG [Redacted] was also a member of the Nov[ember] [20]08, board when SGT [Redacted] lost her promotable status. 1SG [Redacted] stated he did not remember too much of what was said but does recall [Applicant] told her she had an alcohol problem, and she could overcome it. 1SG [Redacted] stated he did remember the board members asking her some hard questions pertaining to her situation but could not recall any specifics. 1SG [Redacted] stated SGT [Redacted] took responsibility for what had happened to get her to the board.

About 1430, 4 Mar[ch] [20]09, SA [Redacted] interviewed 1SG [Redacted] USAG [U.S. Army Garrison] – Fort Monroe, who stated he could not recall what transpired at the 29 Apr[il] [20]08, promotion board, but did not have any memory of anything unusual happening. 1SG [Redacted] stated he was at the removal board for SGT [Redacted] in Nov[ember] [20]08, and could not recall the applicant saying anything harsh to SGT [Redacted]. 1SG [Redacted] stated the only thing that sticks out was SGT [Redacted] was crying during most of the board.

About 1030, 09 Mar[ch] [20]09, SA [Redacted] interviewed 1SG [Redacted] who stated he was pretty sure SGT [Redacted] went through the whole board proceedings on 29 Apr[il] [20]08. 1SG [Redacted] stated he does not ever remember any Soldier being stopped in the middle of telling the board

members their biography and being dismissed from the board. 1SG [Redacted] stated he remembered SGT [Redacted] because her uniform was too tight. 1SG [Redacted] stated on the revocation board he was particularly hard on SGT [Redacted] and asked her quite a few questions. 1SG [Redacted] stated [Applicant] told the 1SG's the decision on SGT [Redacted's] promotable status was their decision. 1SG [Redacted] stated he remembered the applicant told SGT [Redacted] she needed help and her 1SG and Commander were there to help her.

About 1330, 10 Mar[ch] [20]09, SA [Redacted] interviewed Ms. [Redacted] Paralegal Specialist, USAG-Fort Monroe, Building 77, 3 Ruckman Road, Fort Monroe, VA who stated the applicant's door was open most of the time. Ms. [Redacted]-whose office was located directly across from [Applicant's] office stated she did not know if SGT [Redacted] was ever inside [Applicant's] office with the door closed. Ms. [Redacted] never saw any type of touching between [Applicant] and SPC [Specialist] [Redacted] stated she did not talk to SGT [Redacted] often but SGT [Redacted] came to work, did her job and left. Ms. [Redacted] stated she never smelled any alcohol on SGT [Redacted] and SGT [Redacted] was quiet.

About 1000, 17 Mar[ch] [20]09, SA [Redacted] interviewed SSG [Staff Sergeant] [Redacted], Secretary of the Garrison CSM [Command Sergeant Major], Building 77, Fort Monroe, VA who stated [Applicant] never touched her or attempted to kiss her. She never witnessed [Applicant] touch or kiss anyone in her presence and she had been working for [Applicant] since Sep[tember] [20]08. [Applicant] told SSG [Redacted] he believed SGT [Redacted] had an alcohol issue and she needed help. SSG [Redacted] provided the memorandum pertaining to the Promotion Board Removal for SGT [Redacted].

About 1130, 17 Mar[ch] [20]09, SA [Redacted] interviewed Ms. [Redacted] formerly SFC, Chief of Public Affairs, Public Affairs Office, Fort Monroe VA, who stated she did sit at the removal board on 23 Oct[ober] [20]08 and said [Applicant] was very hard on SGT [Redacted] and believed he acted inappropriately by the questions he asked and how he talked to her. Ms. [Redacted] stated she was the President of the BOSS [Better Opportunities for Single Soldiers] program and was later demoted to Vice President of the Better Opportunities for Single Soldiers (BOSS) Program when SSG [Redacted] was promoted to BOSS president. Ms. [Redacted] stated [Applicant's] excuse for the action was because people were complaining about having an E-7 as the President of the BOSS program. Ms. [Redacted] stated the key to the BOSS house was in [Applicant's] desk and as far as she knew he was the only one with a key.

About 1000, 17 Mar[ch] [20]09, SA [Redacted] interviewed SSG [Redacted] Secretary of the General Staff, 33 Ingalls, Fort Monroe VA who stated she did sit on the promotion board resulting in the removal of SGT [Redacted's] promotable status and did not believe [Applicant] belittled SGT [Redacted] during the board. SSG [Redacted] stated the applicant did tell SGT [Redacted] she needed to seek help.

About 1853, 23 Mar[ch] [20]09, SA [Redacted] interviewed SSG [Redacted], 233rd MP Det., Fort Monroe, VA who provided a sworn statement detailing her time as the secretary for [Applicant]. She also said she did think [Applicant] was capable of sexually assaulting SGT [Redacted] because he was manipulative. SSG [Redacted] further explained [Applicant] would do something for a Soldier and would make you feel like he was doing the Soldier a favor and made it seem like you owe him. SSG [Redacted] believed he did not try anything on her because she was a strong person, but she believed SGT [Redacted] was weak and [Applicant] could have tried. SSG [Redacted] further stated [Applicant] did flirt with her by saying she looked good, and he would bite his lower lip and say "mmmm you look good".

About 1455, 15 Mar[ch] [20]09, SA [Redacted] reinterviewed SGT [Redacted] who stated she knew where the key to the BOSS house was because [Applicant] told her it was in the top left drawer of his desk and that she was to retrieve and meet him at the BOSS house.

About 1045, 16 Apr[il] [20]09, SA [Redacted] apprised CPT [Captain] [Redacted] Post Judge Advocate, Fort Monroe, VA on the results of this investigation. CPT [Redacted] opined there was probable cause to believe [Applicant] committed the listed offenses.

About 1100, 16 Apr[il] [20]09, SA [Redacted] briefed Mr. [Redacted] Fort Monroe Deputy Commander, Building 7, Fort Monroe, VA, on the results of this investigation. ///Last Entry///

4. On 17 December 2009 before a general court-martial at Fort Eustis, VA, the applicant was found guilty of maltreatment of a person subject to his orders on divers occasions between 1 April 2008 and 15 June 2008. His sentence included a reprimand, confinement for 3 months, and reduction to E-8. On 4 August 2010, his sentence was approved.
5. The DD Form 2707, 17 December 2009 (exhibit 7), wrongfully shows he was convicted of violating Article 120 (see exhibit 7). A second DD Form 2707, 18 December 2009, corrected his conviction to include only Article 93 (see exhibit 8).

6. The DA Form 4833 with a referral date of 18 February 2009 and a suspense date of 1 February 2010 lists the applicant as the offender for the offenses of Aggravated Sexual Contact (Adult), Cruelty of Subordinates, and Assault. The report shows the commander's decision date as 26 February 2010 and referral of the action to a general court-martial. Block 4 (Action Taken) shows the applicant pled guilty to all charges and received an oral reprimand, 3 months in confinement, and reduction to E-8; no sanctions were suspended. The Commander's Remarks note: "DA Form 48330 [4833] (Result of Trial) attached for any required clarification to charge adjustments."

7. The DA Form 4833 with a referral date of 18 February 2009 and a suspense date of 19 May 2010 lists the applicant as the offender for the offenses of Aggravated Sexual Contact (Adult), Cruelty of Subordinates, and Simple Assault – Consummated by a Battery. The report shows the commander's decision date as 19 April 2010 and referral to a general court-martial. Block 4 (Action Taken) shows the judicial punishment authority as general court-martial. Block 5 (Nonjudicial Punishment/Court-Martial/Civilian Criminal Court Proceeding Outcome) does not show charged offenses, pleas, or findings. Block 9 (Suspended Sanctions) shows no sanctions were suspended. The Commander's Remarks note: "Migrated Data 4833 Version 1 – Judicial Finding Other. Migrated Data 4833 – No Action Taken Reason: NOT ENOUGH EVIDENCE TO SUPPORT A CONVICTION."

8. The applicant retired on 31 July 2010. He completed 27 years, 10 months, and 16 days of net active service during this period.

9. As noted by counsel, [REDACTED] Law Enforcement Division denied his request for a concealed weapons permit on 4 March 2021.

10. The CID letter, 17 June 2021, responded to the applicant's request for CID files.

11. The CID letter, 11 July 2023, notified the applicant that his request to correct information from the files of the CID/U.S. Army Crime Records Center was denied. He was instructed to appeal to the Army Board for Correction of Military Records if he disagreed with this denial.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found relief is not warranted. Counsel's contentions, the applicant's military records, and regulatory guidance, including Department of Defense Instruction 5505.07, were carefully considered.

2. The Board determined a preponderance of the evidence shows an error or injustice did not occur when the applicant's request to be untitled for cruelty and maltreatment of a subordinate, assault, and aggravated sexual contact was denied by CID. The Board found that probable cause existed at the time of titling and still exists to show the offenses occurred and the applicant committed the offenses.

3. First, the Board noted the applicant was found guilty of cruelty and maltreatment of a subordinate in that he kissed her on the mouth and placed his tongue in her mouth, licked his lips while staring at her and commenting on her body and sex appeal, and by wrongfully making sexually suggestive comments to her. Probable cause existed at the time of titling for these offenses and still exists and he should remain titled for cruelty and maltreatment of a subordinate even if there is no similar crime under civilian law.

4. Next, the Board considered the offenses of assault and aggravated sexual contact. The Board weighed the fact that the applicant was not court martialed for assault and he was found not guilty of aggravated sexual contact. However, while the results of the court martial proceedings are relevant, they are not the only factor for the Board to consider. The level of proof to convict at a court martial is proof beyond a reasonable doubt, a higher standard than probable cause.

5. The Board carefully reviewed the various witness statements obtained as part of the investigation, particularly the statements of the applicant, the victim, and the Staff Sergeant who witnessed the applicant treating his subordinates inappropriately. No additional evidence was provided by the applicant with his application. After reviewing all the evidence, the Board concluded the preponderance of the evidence supports the victim's account and probable cause still exists that the applicant committed the offenses.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

3/6/2025

X _____
 CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 600-20 (Army Command Policy), chapter 8 (Sexual Assault Prevention and Response Program), provides that sexual assault is a crime defined as intentional sexual contact, characterized by use of force, physical threat, or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim. "Consent" will not be deemed or construed to mean the failure by the victim to offer physical resistance.

2. DOD Instruction 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), 8 August 2023, establishes policy, assigns responsibilities, and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DOD law enforcement activity (LEA) reports and indexing them in the DCII.

a. Pursuant to Public Law 106-398, section 552, and Public Law 116-283, section 545, codified as a note in Title 10, U.S. Code, section 1552, establishes procedures for DOD personnel through which:

(1) covered persons titled in DOD LEA reports or indexed in the DCII may request a review of the titling or indexing decision; and

(2) covered persons titled in DOD LEA reports or indexed in the DCII may request their information be corrected in, expunged, or otherwise removed from DOD LEA reports, DCII, and related records systems, databases, or repositories maintained by, or on behalf of, DOD LEAs.

b. DOD LEAs will title subjects of criminal investigations in DOD LEA reports and index them in the DCII as soon as there is credible information that they committed a criminal offense. When there is an investigative operations security concern, indexing the subject in the DCII may be delayed until the conclusion of the investigation.

c. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Judicial or adverse administrative actions will not be taken based solely on the existence of a DOD LEA titling or indexing record.

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DOD LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion of their information in the DOD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DOD LEA report, DCII, and any other record maintained in connection with the DOD LEA report when:

(a) probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred;

(b) probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense; and

(c) such other circumstances as the DOD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs 3.2.a.(1) and (2).

(2) In accordance with Public Law 116-283, section 545, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DOD LEA head or designated expungement official will also consider:

(a) the extent or lack of corroborating evidence against the covered person with respect to the offense;

(b) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and

(c) the type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

//NOTHING FOLLOWS//