

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED] [REDACTED] [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230012079

APPLICANT REQUESTS: through counsel:

- amendment of the U.S. Army Criminal Investigation Command (CID) Law Enforcement Report (LER) – Final, 17 September 2019, to remove the charges of "wrongful use of marijuana" and "wrongful possession of anabolic steroids"
- expungement of the applicant's deoxyribonucleic acid (DNA) samples and fingerprint card from CID, U.S. Army Criminal Investigation Laboratory (USACIL), Combined DNA Index System (CODIS), and Defense Incident-Based Reporting System (DIBRS) records

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of the Title 10, U.S. Code, Section 1552)
- Counsel's Brief in Support of Application for Correction of Records, undated, with supporting documents organized and labeled as exhibits –
 - Exhibit 1 – DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), 15 April 2020
 - Exhibit 2 –
 - CID LER – Final, 17 September 2019
 - CID Form 94 (Agent's Investigation Report), 25 July 2019, with auxiliary documents
 - Exhibit 3 – CID/U.S. Army Crime Records Center (CRC) Letter, 16 December 2020
 - Exhibit 4 – DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 16 November 2019
 - Exhibit 5 –
 - CID Letter, 21 June 2023

- CID Memorandum (Legal Review of Request for Amendment of Record – (Applicant), 20 June 2023

FACTS:

1. The applicant defers to counsel.
2. Counsel states the applicant respectfully requests removal of the charges of "wrongful use of marijuana" and "wrongful possession of anabolic steroids" from his CID records and removal of his DNA samples and fingerprint card from CID, USACIL, CODIS, and DIBRS records.

a. Facts:

(1) On 28 December 2018, the applicant was titled for the offenses of wrongful use of marijuana in violation of Article 112a, Uniform Code of Military Justice (UCMJ), and wrongful possession of anabolic steroids in violation of Article 112a, UCMJ (see exhibit 1).

(2) CID received a report from U.S. Customs and Border Protection which stated the applicant had admitted to marijuana use and steroid possession during a pre-employment polygraph examination. As a result, CID searched his barracks room and discovered two boxes and a bag containing anabolic steroids (see exhibit 2).

(3) Subsequently, the applicant was interviewed by CID agents and stated he had used marijuana and had purchased the steroids online in June 2018 but never used them. After reviewing the evidence seized in his barracks room and his statement to CID, the legal officer found probable cause to opine that the applicant had committed two violations of Article 112a, UCMJ, and that no further investigative efforts were required. Subsequently, the applicant received nonjudicial punishment (NJP) and was found guilty of the two UCMJ violations. His punishment consisted of forfeiture of pay in the amount of \$1,227.00 (suspended) (see exhibit 1).

(4) The applicant applied to CID to amend his CID records in December 2020, which was denied (see exhibit 3).

b. Argument:

- (1) Material Error.

(a) First and foremost, the applicant would like to take this opportunity to apologize to the Army as a whole and his fellow Soldiers. He understands that Soldiers

are held to a high standard of personal conduct and that his actions fell below that standard when he purchased the anabolic steroids. He immediately recognized the error of his ways and did not ingest the steroids, but the fact remains that he purchased them. He is contrite about this mistake and is repentant about his misconduct. He has learned from this unfortunate decision and now seeks to remove this indelible stain from his military records.

(b) Here, the applicant has been prejudiced by a material error of discretion by CID. In this instance, he should have both charges removed from his CID records because the CID records do not accurately and completely explain the unique circumstances that led to the CID investigation and subsequent NJP. He admitted to purchasing anabolic steroids online out of curiosity approximately 1 year before they were discovered in his barracks room. When the search warrant was executed and the steroids were discovered, the package was unopened and all of the pills were accounted for. His CID records are incomplete because they do not provide exculpatory context that demonstrates that he had a change of heart immediately after purchasing the steroids and decided not to use them. In hindsight, he understands that he should have thrown away or destroyed the anabolic steroids immediately, but he had simply forgotten about them in his barracks until the topic of controlled substances was raised during his interview with U.S. Customs and Border Protection. His incomplete CID records paint him in a harsher light than the actual facts of the situation because the records do not properly indicate that he had consciously decided not to violate Article 112a, UCMJ, by ingesting the steroids that he purchased. Although he had a momentary lapse in judgment, he ultimately made the correct choice and maintained his integrity and military bearing.

(c) In regard to the allegation that the applicant violated Article 112a, UCMJ, by wrongfully ingesting marijuana, this statement is also inaccurate. The personnel who were conducting the interview for U.S. Customs and Border Protection were repeatedly and improperly pressuring him to admit to using marijuana during his Army service. He denied using marijuana on numerous occasions before finally relenting because this is what he believed the interviewing personnel wanted to hear. He immediately regretted his decision to acquiesce to the question, but the agents had already documented his answer. He attempted to clarify his answers to his command when his answers were forwarded to the Army for review, but CID still titled him for the offense of wrongful use of marijuana. The inclusion of this offense is not only factually inaccurate in his CID records, but it is also incomplete because there is no corroborating evidence whatsoever that he actually ingested marijuana. There are no positive urinalysis results, statements from other Soldiers, photographs, implicating text messages, or any other physical evidence to support the probable cause finding that he violated Article 112a, UCMJ. As such, the offense of wrongful use of marijuana should clearly be removed from his CID records because the information is causing undue and inequitable prejudice against him.

(2) Material Injustice.

(a) Here, the applicant has been unjustly stigmatized and prejudiced because of the information in his CID records. Due to the nature of titling UCMJ offenses when a background investigation is conducted on him, there appears to be a federal conviction in his military records for violating Article 112a, UCMJ. This misrepresentation of his supposed criminal misconduct continues to impede his employment opportunities in the civilian sector because of the false narrative that he is a federal convict. Obviously, when a prospective employer sees that a potential job candidate has a federal conviction for drug use or possession, it will cause the employer to question an individual's character, professionalism, and trustworthiness. This is especially true for any employment with local, state, or federal government or any occupation that may require a security clearance. Despite serving honorably and with distinction in the Army, the applicant has been improperly labeled by his CID records and has had his character unjustly impugned by the information in his CID records. This information will continue to unduly hinder him until it is removed from his military records.

(b) Although the applicant received NJP for the Article 112a, UCMJ, charge, he was able to successfully complete his enlistment and was honorably discharged from the Army on 16 November 2019. He served a total of 4 years, 4 months, and 10 days in the Army. During his service, he earned the Army Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Expert Infantryman Badge, and Parachutist Badge (see exhibit 4). The totality of the circumstances demonstrates that he was an excellent Soldier who should be proud of his Army service. Unfortunately, a single mistake in 2018 has caused reverberating negative effects on his life outside the military and will continue to hinder him until this issue is rectified.

c. Conclusion. In light of the facts and arguments presented herein, the applicant respectfully submits this application to remove the charges of wrongful use of marijuana and wrongful possession of anabolic steroids from his CID records and to remove his DNA samples and fingerprint card from CID, USACIL, CODIS, and DIBRS records. The information in his CID records omits exculpatory and mitigating evidence regarding his alleged misconduct. As such, the records are grossly incomplete and do not accurately reflect the circumstances that led to the titling action. Further, his titling is a prima facie (based on first impression) example of a material injustice because of the undue prejudice and stigma it has created in his life beyond the military.

3. The applicant enlisted in the U.S. Army Reserve (USAR) under the Delayed Entry/Enlistment Program for a period of 8 years on 28 April 2015 with an obligation to enlist in the Regular Army by 7 July 2015 for a period of 4 years and 19 weeks. On 7 July 2015, he was discharged from the Delayed Entry/Enlistment Program and enlisted in

the Regular Army in the rank/grade of private two/E-2. He was promoted to the rank/grade of sergeant/E-5 effective 1 February 2019.

4. The CID Form 94 noted:

a. About 1639, 23 July 2019, a CID special agent received a request for information, which detailed that the applicant admitted to marijuana use and steroid possession during a pre-employment polygraph examination conducted by the U.S. Customs and Border Protection Office of Professional Responsibility Credibility Assessment Division.

b. The applicant failed two polygraph examinations conducted on 11 July 2019 and 15 July 2019 at Fort Bragg. After the second failed polygraph examination, the applicant admitted he used marijuana while on leave in Liberty Hill, TX, sometime between December 2018 and January 2019. Further, the applicant said he purchased anabolic steroids and testosterone enanthate, and an estrogen blocker, from an online retailer in December 2018. The applicant said he did not use steroids after discussing it with his father and still had the steroids in his possession.

c. On 24 July 2019 after seeking consent to search his barracks room from the company commander, the investigator examined the scene, took photographs, and collected an envelope, two boxes, and a bag as evidence. The applicant was advised of his rights, which he waived, and stated he purchased the steroids around June 2018. He stated the told the border patrol polygraph examiner that he smoked marijuana while on leave because he could not remember if he actually did so while on leave in the December time frame. He was photographed and fingerprinted and released to his unit.

d. On 25 July 2019, the evidence was sent to the laboratory.

5. The redacted CID LER – Final, 17 September 2019, shows Fort Bragg CID was notified in a report on 23 July 2019 that the applicant admitted to marijuana use and steroid possession during a pre-employment polygraph examination conducted by U.S. Customs and Border Protection.

a. A search of the applicant's barracks room revealed two boxes and a bag containing steroids. He was interviewed and admitted he used marijuana and purchased steroids online in June 2018 but never used them.

b. The Fort Bragg Trial Counsel opined probable cause existed to believe the applicant committed the listed offenses. No additional investigative efforts were required. There was sufficient information to provide to command for consideration for action.

c. The applicant was listed for the following UCMJ offenses under Article 112a (Wrongful Use, Possession, etc., of Controlled Substances):

- wrongful possession of anabolic steroids
- wrongful use of marijuana

6. The DA Form 2627 (Record of Proceedings under the Article 15, UCMJ) states the applicant was considered for imposition of NJP under the provisions of Article 15, UCMJ, on 27 September 2019 at or near Fort Bragg, NC, for the following offenses:

a. wrongfully possessing testosterone propionate, a controlled substance, in violation of Article 112a, UCMJ, on or about 1 June 2018; and

b. wrongfully using marijuana, a controlled substance, in violation of Article 112a, UCMJ, between on or about 1 December 2019 and 31 January 2019.

c. The applicant was afforded the right to consult with counsel. In a closed hearing and having considered all matters presented, the imposing commander found him guilty of all specifications. The punishment included reduction in rank/grade to specialist/E-4; forfeiture of \$1,277.00 pay per month for 2 months, suspended, to be automatically remitted if not vacated on or before 4 April 2020; extra duty for 30 days; and restriction to the limits of company area, dining/medical facility, and place of worship for 30 days.

d. The applicant elected not to appeal. The imposing commander directed filing the DA Form 2627 and auxiliary documents in the restricted folder of his Official Military Personnel File on 7 October 2019.

7. A review of the applicant's Army Military Human Resource Record shows the subject DA Form 2627 with allied documents (sworn statements, photographs, fingerprint card, etc.) are filed in the restricted folder.

8. Headquarters, U.S. Army Garrison, Fort Bragg, NC, Orders 305-0277, 1 November 2019, reassigned the applicant to the U.S. Army Transition Point on 4 November 2019, released him from active duty on 16 November 2019, and transferred him to the USAR Control Group (Reinforcement).

9. He was honorably released from active duty in the rank/grade of sergeant/E-5 on 16 November 2019 and transferred to the USAR Control Group (Reinforcement) by reason of completion of required active service. He completed 4 years, 4 months, and 10 days of net active service during this period.

10. The DA Form 4833, 15 April 2020, lists the applicant as the offender.

a. Item 3 (Referral Information) shows the applicant was referred for two offenses of the UCMJ. The commander took action against the applicant on 29 October 2019 for the offenses of wrongful possession of anabolic steroids on 1 June 2018 and wrongful use of marijuana on 28 December 2018.

b. Item 4 (Action Taken) shows a checkmark in the "Administrative" box and a checkmark in the "Non-Judicial (Article 15)" box. The NJP authority is listed as "field grade."

c. Item 5 (NJP/Court-Martial/Civilian Criminal Court Preceding Outcome) shows the applicant pled guilty and was found guilty of the two offenses.

d. Item 8 (Non-Judicial/Judicial Sanctions) shows the applicant's punishment was adjudged on 7 October 2019, consisting of forfeiture of \$1,277.00 pay for 2 months, 30 days of extra duty and restriction, and reduction from the grade of E-5 to E-4.

e. Item 9 (Suspended Sanctions) shows a checkmark in the "Yes" box of the "Were Any Sanctions Suspended?" statement. The forfeiture of 2 months of pay was suspended for 2 months.

f. Item 11 (Commanding Officer or Reporting Officer) shows a checkmark in the "No" box for "Was a DNA sample collected from the offender?" His battalion commander signed the form on 15 April 2020.

11. The CRC letter from the Deputy Director, 16 December 2020, responded to counsel's request of 8 December 2020 to correct information in the applicant's CID records. The Deputy Director informed him of the criteria to amend an LER and information in the CID databases (see attachment for further details).

12. The CID memorandum (Legal Review of Request for Amendment of Record – (Applicant), 20 June 2023, states that based on the review of the LER and amendment packet, the attorney/advisor found there is probable cause to believe the applicant committed the offenses for which he was titled.

a. Public Law 116-283, section 545 (Removal of Personally Identifying and Other Information of Certain Persons from Investigative Reports, the Department of Defense (DOD) Central Index of Investigations (DCII), and Other Records and Databases), required the Secretary of Defense to establish and maintain a policy and process for a person to request their DOD law enforcement record be amended, corrected, expunged, or otherwise removed when it is determined probable cause did not or does not exist to believe that the individual committed the alleged criminal offense(s). To date, DOD has not published implementation guidance; however, in November 2022,

the Secretary of the Army directed CID to adopt the probable cause standard for review of amendment requests, as prescribed in section 545 of Public Law 116-283.

b. The applicant was titled for the two violations of Article 112a, UCMJ, wrongful use of a controlled substance (marijuana) and possession of steroids, when he admitted using marijuana during a pre-employment polygraph examination conducted by U.S. Customs and Border Protection and when questioned by a CID special agent, the applicant again admitted he used marijuana and purchased and possessed steroids. A search of the applicant's barracks room revealed steroids. Based on his review of the LER, he concurred with the trial counsel that there was probable cause to believe the applicant violated Article 112a, UCMJ, for use and possession of controlled substances.

c. Consistent with the direction received from the Secretary of the Army, since probable cause existed to believe the applicant committed the offenses listed in the LER, his record should not be amended to remove his name from the title block and any corresponding entry in the DCII should remain.

13. The CID letter, 21 June 2023, responded to counsel's request (not available for review) and stated, in part:

a. After a review of the LER was completed in accordance with Public Law 116-283, section 545, it has been concluded that your amendment request is denied.

b. In relation to the redacted legal review, be advised that the names of law enforcement personnel, as well as names, social security numbers, and other personal items of information pertaining to third parties are withheld pursuant to Freedom of Information Act exemptions which protect the personal privacy of other individuals mentioned in the report. Moreover, disclosing the withheld information would harm an interest protected by these exemptions.

c. These withholdings also comply with the Privacy Act because the responsive records are maintained in a system of records that is exempt from the access provisions of the Privacy Act.

d. This partial denial is made on behalf of the CID Director, the Initial Denial Authority for CID records under the Freedom of Information Act.

e. The applicant has the right to appeal to the Office of the Army General Counsel, the Army's appellate authority. If he decides to appeal at this time, his appeal must be submitted within 90 days of the date of this letter. In the applicant's appeal, he must state the basis for your disagreement with the partial denial and you should state the justification for its release. The applicant's appeal is made through this Division and should be addressed to the Chief, Department of the Army Criminal Investigation

Division, FOIA/PA Division, 27130 Telegraph Road, Quantico, Virginia 22134, for forwarding to the Office of the Army General Counsel. Please note that his appeal should address information denied in this response and cannot be used to make a new request for additional or new information.

f. The applicant may appeal the denial of his amendment by submitting a request to the Army Review Boards Agency, Army Board for Correction of Military Records (ABCMR), 251 18th Street South, Suite 385, Arlington, VA 22202-3531.

14. U.S. Army Human Resources Command Orders D-05-311945, 2 May 2023, honorably discharged the applicant from the USAR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board through counsel carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review through counsel of the applicant's petition and available military records, the Board found the applicant was titled for two violations of Article 112a, UCMJ, after admitting to marijuana use and steroid possession during a pre-employment polygraph examination conducted by U.S. Customs and Border Protection (CBP). CID initiated an investigation based on CBP's notification, and during a subsequent interview, the applicant again admitted to using marijuana and purchasing steroids online. Based on this, a lawful search of the applicant's barracks room revealed unopened containers of anabolic steroids.

2. The Board noted that the CID legal officer reviewed the evidence and concurred with trial counsel that probable cause existed to believe the applicant committed both offenses. Evidence in the record shows the applicant received nonjudicial punishment (NJP) under Article 15, UCMJ, for these violations, and the punishment included reduction in rank, forfeiture of pay (suspended), and extra duty. The applicant did not appeal the NJP, and the DA Form 2627 was filed in the restricted folder of his Army Military Human Resource Record (AMHRR). The Board acknowledged, the applicant assertions that the CID report does not fully describe his conduct, emphasizing that the steroids were never used, and the marijuana admission was coerced during a pre-employment polygraph with U.S. Customs and Border Protection and was untrue. The applicant further argued that the titling was based solely on his statements without corroborating evidence and that probable cause was lacking.

3. The Board reviewed the applicant's counsel's contentions under the standards set forth in DoDI 5505.07, Section 3.2, whereas titling and indexing are administrative actions based on the existence of credible information and do not imply guilt.

Expungement may only be granted when probable cause did not or does not exist to believe the offense occurred or was committed by the titled individual, or when expungement is otherwise in the interest of justice. The Board determined that the evidence available at the time of the investigation including the applicant’s voluntary admissions, physical evidence recovered, and the legal review by CID met the threshold for probable cause. Furthermore, adverse administrative action was taken in the form of NJP, reinforcing the appropriateness of the titling decision.

4. The Board found no compelling evidence to refute the original findings or to support expungement under the applicable standards. Therefore, the Board determined that the titling and indexing were properly executed and that the associated records should remain. Based on the evidence provided, the Board denied the applicant’s counsel’s request to amend the CID LER and to expunge his fingerprint and DNA records from law enforcement databases.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.



X //SIGNED//

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 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

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.

3. DOD Instruction 5505.11 (Fingerprint Card and Final Disposition Report Submission Requirements) implements policy, assigns responsibilities, and prescribes procedures for reporting offender criminal history data to the Criminal Justice Information Services Division of the Federal Bureau of Investigation by DOD law enforcement organizations for inclusion in the National Crime Information Center criminal history databases. Paragraph 6 (Procedures) states dispositions that are exculpatory in nature (e.g., dismissal of charges, acquittal) shall also be filed.

4. DOD Instruction 5505.14 (DNA Collection and Submission Requirements for Law Enforcement) establishes policy, assigns responsibilities, and prescribes procedures for DNA sample collection and submission requirements for the purpose of inclusion in the Combined DNA Index System.

a. CID and other DOD LEAs, DOD correctional facilities, Coast Guard Investigative Service, and commanders will collect and submit DNA samples from service members and civilians when their fingerprints are collected pursuant to DOD Instruction 5505.11.

b. CID and other DOD LEAs, and DOD correctional facilities will develop expungement procedures and provide instructions concerning expungement rights and procedures to all persons from whom DNA samples are collected as outlined in section 4.

c. CID and other DOD LEAs, DOD correctional facilities, and commands will submit DNA samples to USACIL at the time of collection. CID and other DOD LEAs will take DNA samples from civilians whom they detain or hold and who remain within their control when it is determined there is probable cause to believe the civilian has committed an offense that results in the collection of fingerprints.

d. Former or retired service members from whom samples were taken but who were not convicted of any offense by a general or special court-martial, or can provide a certified copy of a final court order documenting the charge has been dismissed or resulted in an acquittal, may request in writing that their DNA records be expunged in accordance with the procedures in this section. Former or retired service members will submit requests for expungement to the Clerk of Court of the Military Department's Court of Criminal Appeals.

(1) Requests will include:

(a) All reasonably available proof showing that none of the offenses giving rise to the collection of DNA resulted in a conviction at a general or special court-martial (including a final court order establishing that such a conviction was overturned, or establishing action by the convening authority that has the effect of a full acquittal). A court order is not final if time remains for an appeal or application for discretionary review with respect to the order.

(b) The former or retired service member's name, social security number, current address and contact information, date of alleged offense, and contact information of the unit that the former service member belonged to when the sample was taken.

(2) Requests that do not provide adequate information to identify the alleged offense or to confirm that the alleged offense did not result in a conviction will be returned by "return receipt requested" with an explanation of the deficiency.

e. The Clerk of Court of the appropriate Military Department's Court of Criminal Appeals will search their records for any conviction pertaining to the former or retired service member and determine whether the former or retired service member is entitled to expungement. The Clerk of Court of the Military Department's Court of Criminal Appeals will send appropriate requests for expungement by former or retired service members to USACIL.

f. USACIL will review all requests for expungement that it receives to ensure they contain all the required information. Incomplete requests will be returned to the submitter. Only such requests that are deemed meritorious, USACIL will expunge the DNA records, destroy the submitted sample, notify the individual of its actions, and maintain documentation of that notice.

g. Civilians whose samples are taken and forwarded pursuant to paragraph 1.2.c., but who are not convicted of any offense, or provide a certified final court order documenting the conviction has been overturned, may request in writing that their DNA sample be expunged.

//NOTHING FOLLOWS//