



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

██████████
Docket No. 2499-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 24 September 2025. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations, and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

The Board carefully considered your request to: (1) remove your name from the Navy Criminal Investigation Service (NCIS) Report of Investigation (ROI) for Child Pornography, Wrongful Broadcast or Distribution of Intimate Images and Sex Trafficking of Children, (2) update the Defense Central Index of Investigations (DCII) and all related databases or repositories to reflect that you are not titled for Child Pornography, Wrongful Broadcast or Distribution of Intimate Images and Sex Trafficking of Children, (3) update the DCII and all related databases or repositories to reflect that you were never charged for any criminal code violation by the Marine Corps as a result of or related to the NCIS ROI, and (4) any other appropriate relief. The Board considered your statement and arguments that probable cause does not exist to support the titled offenses relating to the allegation of communicating a threat, and the allegations of sex trafficking of a minor and child pornography were unsubstantiated as they pertain to your involvement and should not be titled for those offenses. You contend that Uniform Code of Military Justice (UCMJ) Article 117 is different from the offense than what was reported by NCIS in the DCII and National Crime Information Center (NCIC). Article 117 is not and was not at the time an offense

covering wrongful broadcast or distribution of intimate images.¹ Accordingly, the titling for that offense as of the date of your alleged conduct is an ex-post facto application of the law, is unfair and unjust, and contrary to law and regulation. You also contend, UCMJ Article 134 requires that an accused knowingly and wrongfully possessed, received, or viewed child pornography. Upon learning that the female was a minor, you claim that you deleted the video. You further contend that you received NJP for violating the Marine Corps Social Media policy and there were no charges related to child pornography. You note that the individual that had sex with the minor was punished at court-martial.

The Board determined that your name was properly titled and indexed in accordance with Department of Defense Instruction (DoDI) 5505.07. In making this decision, the Board noted the NCIS investigation into a child pornographic video that was uploaded to a pornographic website "Pornhub." According to the NCIS ROI, in part, the pornographic video depicted a minor (16-years-old). A search warrant showed that three child pornographic videos were uploaded and the username was associated with your email address. A review of your iPhone also produced a conversation between you and another member where you sent two links associated with "Pornhub." On 23 October 2019, you received NJP for violating UCMJ Article 92 for wrongfully uploading an inappropriate video to www.Pornhub.com. Your Commanding Officer (CO) found you guilty, awarded reduction in rank to E-2, forfeitures of pay, and restriction. On 17 April 2020 you were discharged with an Honorable characterization of service due to a Condition, Not a Disability.

The Board noted that, through counsel, you submitted a request to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division requesting to correct your FBI identification record. In response to your request, the NCIS Office of Counsel reviewed the investigative file, denied your request for expungement, and determined that your requested corrections to NCIC are moot. In this regard, the NCIS Office of Counsel found that probable cause still exists and made the following determinations: (1) the case was titled as the result of an investigation into violations of Article 134, 117a, and 18 U.S.C. section 1591 after the discovery of an uploaded recording of a 16 year-old engaged in sexual intercourse with another Marine, "██████████" to the website "Pornhub.com," (2) ██████████ admitted to NCIS agents that he engaged in sexual intercourse with the minor, he recorded the act for approximately 15 seconds, and subsequently transmitted the recording to several Marines, including you, (3) ██████████ told NCIS agents that you told him you uploaded the videos to "Pornhub" between 23 and 24 April 2018, and (4) a search warrant returned from "Pornhub" indicated that a username associated with the email address ██████████ uploaded three videos on 23 and 24 April 2018. NCIS thus determined that a reasonable and prudent person, apprised of these non-exhaustive facts and circumstance, would be justified in their belief that you likely possessed (if not distributed) child pornography and wrongfully broadcasted intimate images of someone engaged in sexual intercourse, without her consent, in violation of UCMJ Articles 134, 120c and 117a.

¹ You incorrectly reference Article 117 instead of 117a. Article 117a prohibits the wrongful broadcast or distribution of intimate visual images. Key elements of the offense include the accused knowingly distributing a non-consensual intimate recording and the conduct having a "reasonably direct and palpable connection" to a military environment or mission.

NCIS also noted that you were found guilty at NJP for violating a lawful order based on the same predicate facts. NCIS found that the low threshold of probable cause was met to retain the index and titling entries and determined that expungement of the DCII entries and corresponding NCIC III entries related to the titling are not warranted. Moreover, as of 16 April 2024, NCIS noted that the index entries have already been corrected in accordance with your request, including your NJP disposition. NCIS Counsel then denied your request for reconsideration to remove any mention to UCMJ Article 134 for child pornography, noting your argument that any reference to child pornography is unfair, unjust, incorrect, and without legal or factual basis, after determining that the record is accurate, complete, and concretely rooted in both fact and law. Further NCIS determined that your argument that you lacked the requisite mens rea for Article 134 was already considered in the probable cause determination and it would not be unreasonable to find constructive knowledge on your part; thus, establishing probable cause.

The Board substantially concurred with the NCIS determination that your name was properly titled and indexed. In this regard, the Board noted that titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Moreover, according to DoDI 5505.07, “Once the subject of a criminal investigation is indexed in DCII, the information will remain in DCII, even if they are found not guilty, unless the DoD LEA head or designated expungement official grants expungement.” DoDI 5505.07 also directs DoD Law Enforcement Agencies (LEAs) to “title subjects of criminal investigations in DoD LEA reports and index them in DCII as soon as there is credible information [emphasis added] that they committed a criminal offense.” The Board determined that NCIS relied upon credible information when your name was indexed and the NCIS Office of Counsel provided sufficient justification to support their findings that probable cause still exists.

The Board determined that your argument regarding UCMJ Article 117 is misinformed and lacks merit. The Board found that probable cause does exist to support the titled offenses relating to UCMJ Article 117(a). The Board also determined that the application of UCMJ Article 117a was not applied ex-post facto. Prior to your alleged misconduct, UCMJ Article 117(a) was added in 2017 to address the wrongful broadcast or distribution of intimate visual images after becoming law as part of the 2018 National Defense Authorization Act.

Concerning your argument regarding a lack of evidence that you knew the image depicted a minor, the Board, noting the same argument was previously considered by NCIS, concurred there is sufficient circumstantial evidence to infer your knowledge. According to the applicable Manual for Courts-Martial, Chapter 110 of 18 U.S.C., criminalizes the production, distribution, possession with intent to distribute, possession, and receipt of sexually explicit images of actual children under the age of 18. Child pornography means “material that contains either an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct” and “Awareness may be inferred from circumstantial evidence.” Ultimately, the Board found the evidence in your petition insufficient to outweigh the evidence and probable cause regarding your misconduct, and the credibility of the NCIS ROI. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

