21-1432

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

ROBERT J. LABONTE, JR.,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the U.S. Court of Federal Claims in Case No. 18-1784C, Judge Richard A. Hertling.

REPLY BRIEF OF APPELLANT

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CERTIFICATE OF INTEREST

Counsel for Appellant certifies the following:

1. The full name of every party or amicus represented by me is: Robert J. LaBonte, Jr.

2. The name of the real party in interest if the party named in the caption is not the real party in interest is: None.

3. All parent corporations and any publicly held corporations that own 10 percent or more of the stock of the party or amicus curiae represented by me are: None.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or who are expected to appear in this Court, in addition to the counsel who have already appeared in this appeal, are: Michael Wishnie, Renée Burbank, Supervising Attorneys; Sebastian Bates, Law Graduate; Brandon Baum, Lernik Begian, Rhea Christmas, Alexander Fischer, Joshua Herman, Casey Smith, Samuel Davis, Diana Lee, Julia Coppelman, Matthew Handley, Catherine McCarthy, Jared Quigley, and John Super, Law Student Interns.

5. The following cases are those known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal: None.

6. The following information is required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees): N/A.

Dated: September 27, 2021

Respectfully submitted,

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INTRODUCTION

Mr. LaBonte is an Army veteran who served honorably in Iraq. His unit fought insurgents and in combat he experienced mortar fire, rocket attacks, small arms fire, and improvised explosive device blasts that maimed members of his unit and Iraqi civilians. Appellant's Opening Brief ("App. Br.") 6. While on duty in Tikrit, Mr. LaBonte fell out of a 30-foot guard tower. *Id.* He was discovered in a pool of his own blood. *Id.* Because of his service he now experiences symptoms of Traumatic Brain Injury ("TBI") and Post-Traumatic Stress Disorder ("PTSD") that at its peak one of his doctors called "the most severe case of PTSD [she had] ever seen." Appx328. He seeks disability retirement, retroactive to the brutal injury that left him unfit for duty.

10 U.S.C. § 1552(a) empowers the Army Board for Correction of Military Records ("ABCMR" or "Board") to "correct any military record" when "necessary to correct an error or remove an injustice." As the Court of Federal Claims ("COFC") agreed, this statutory authority includes the power to grant retroactive disability retirement by correcting a servicemember's military records. Appx7; 10 U.S.C. § 1552(a). The COFC also concluded, however, and the government now contends, that a limitation on this authority strips the Board of its power in Mr. LaBonte's case. *See* Appx10; 10 U.S.C. § 1552(f) (barring paperwork amendments to "records of courts-martial and related administrative records

pertaining to court-martial cases" that would disturb the underlying legal judgments reflected by those documents). This is incorrect. The statutory exception in § 1552(f) applies to the essentially judicial records created in any court martial, including "related administrative records," analogous to records that might be generated by the clerk's office of a civilian court (and which are not, strictly speaking, part of the judicial proceeding). Mr. LaBonte requests that his DD-214—a universal personnel record, analogous to records that might be generated by a human resources department—be amended, or that he be retired without altering this particular personnel form. He does not seek any change to the judicial records of his court martial or to the legal judgment underlying those records. *See* App. Br. 3-4.

The government's argument, and the COFC decision, are wrong for two reasons. First, in his opening brief, Mr. LaBonte established that § 1552(f) does not bar the Board from correcting his DD-214, in light of the statute's plain meaning, statutory and regulatory context, and unusually explicit legislative history. App. Br. 17-40. The COFC erred by focusing its analysis on the single word "related" and reading that word so broadly as to include any document that happens to contain the magic words "court martial." Appx12-13. Second, even if § 1552(f) did constrain the Board from correcting Mr. LaBonte's DD-214, he did not bring this action over a paperwork dispute. He seeks disability retirement, with

or without a change to his DD-214—and no controlling authority requires the Board to remove his court-martial notation before granting him disability retirement. *See* App. Br. 40-43.

Tellingly, the government does not argue in this Court that the COFC's judgment should be affirmed on any of the other grounds that the government raised below, and that Judge Hertling correctly rejected. It is hence undisputed on this appeal that: (1) Mr. LaBonte is not collaterally attacking his court-martial conviction; (2) Mr. LaBonte is no longer under a punitive sentence from his court-martial conviction; (3) Army regulations do not make him ineligible for disability retirement; (4) Mr. LaBonte is within the class of plaintiffs entitled to disability relief under 10 U.S.C. § 1201; (5) Mr. LaBonte's disability-retirement claim is timely; and (6) the ABCMR is an appropriate board for the relief that Mr. LaBonte seeks. *See* Appx5-10.

Only one of the government's arguments remains: that two words on a routine personnel form destroy the statutory power of the Secretary of the Army, acting through the Board, "to correct an error or remove an injustice." 10 U.S.C. § 1552(a). On that count, the government insists that the COFC was correct to adopt a broad interpretation of the single word "related" in § 1552(f). The government fails, however, to identify the bounds of its own proposed construction of the word. And in any event, the government is unable to cite any

statute, regulation, or other authority that requires the Board to delete a reference to a court martial before granting disability retirement.

This Court should hold that the COFC erred when it held that § 1552(f), which prevents the Board from nullifying the substantive legal judgment of Mr. LaBonte's court martial, also prevents the Board from performing routine corrections to Mr. LaBonte's generic personnel documents to grant him disability retirement. Alternately, this Court should hold that the COFC erred when it deferred to the government's unsubstantiated assertion that the Board must remove the words "court martial" from Mr. LaBonte's DD-214 before granting him statutorily mandated disability retirement.

ARGUMENT

I. The Secretary, Acting Through the Board, Has the Statutory Authority to Correct Mr. LaBonte's DD-214 to Reflect Disability Retirement.

10 U.S.C. § 1552(f) does not alter the Secretary's broad statutory authority, exercised through the Board, to correct Mr. LaBonte's DD-214. Section 1552(a) grants the Secretary the broad authority to "correct any military record" when necessary to "correct an error or remove an injustice." App. Br. 17-18. Section 1552(f) carves out a specific exception to that broad authority: The Board, with "respect to records of courts-martial and related administrative records pertaining to court-martial cases," may make corrections only to reflect (1) "actions taken by

reviewing authorities under chapter 47" or (2) "action on the sentence of a court-martial for purposes of clemency."[1] App. Br. 21.

The plain meaning of the statute, as well as its regulatory context and legislative history, demonstrate that § 1552(f) prevents military records-correction boards from overturning the substantive legal judgments of courts martial or from revising the records generated during a court-martial proceeding, including the record of a court martial (a military term of art) and "related administrative records" (a category of documents recognized in military-justice regulations). The latter category—"related administrative records"—are quasi-judicial records, the equivalent of records in a clerk's office that are created as a result of a judicial proceeding, but are not formally part of its record. But the statute does not prevent the Secretary, acting through the Board, from making simple changes to universal personnel documents that have no effect on, and do not come from, the military-

[1] That Mr. LaBonte's DD-214 still reflects a court-martial sentence to which he is no longer subject (because he has received clemency) is a mere administrative oversight. App. Br. 22. The Army Discharge Review Board ("ADRB") could have amended the form when exercising its authority to "take action on the sentence of a court-martial for purposes of clemency." *Id.* In other cases, military records-correction boards have, after the fact, amended servicemembers' records to remedy the exact same oversight, acting pursuant to their clemency authority under § 1552(f)(2). *See id.* Nothing prevents the Board from doing the same here.

justice system. Put simply, the government treats human-resources records as though they were documents from a court.[2]

As the government concedes, DD-214s are not categorically "related administrative records pertaining to court-martial cases." Defendant's Response Brief ("Def. Br.") 29 ("[N]ot *every* DD-214 is related to a court-martial."). This concession bolsters Mr. LaBonte's argument: If amending a DD-214 cannot affect the integrity of the underlying legal judgments of courts martial, as indeed it cannot, then a DD-214 does not fall into the category of documents governed by § 1552(f). But the government insists that even though the DD-214 is not related to court-martial cases, the last remaining barrier to Mr. LaBonte's disability retirement must stand because § 1552(f) dictates that *his particular* DD-214 must be a record "related" to a court-martial case. *Id*.

The government is wrong. Congress did not write § 1552(f) to mandate that the boards strain to review every routine personnel document for any mention of the word "court martial." The government's decontextualized and overbroad

[2] To analogize to a civilian legal proceeding: Section 1552(f) may bar amendment of documents that are like a police report included in a court file, or paperwork generated by a clerk's office during a judicial proceeding, because the contents of those documents could have a legal effect on the proceeding and its judgment. However, a civilian convicted of a crime might have their conviction documented by a human resources department, after the fact. The human resources file, even where it documents a conviction, is an unrelated paper that did not arise from, and has no bearing on, the proceeding. Amendments to make it accurate do not affect the underlying judgment.

reading of "related" misinterprets the plain text, legislative history, and regulatory framework of § 1552(f), and it ignores a clear prescription from the Supreme Court warning courts against overreading the word "related."

A. Records "Related" to Court-Martial Cases Are Those That Arise From the Military-Justice System.

Section 1552(f) covers records that exist within or come from the military-justice system—not, as the government seems to contend, any piece of military paper that includes the words "court martial." A specific body of Supreme Court caselaw, anticipating this exact question, warns against overreading the word "related" and directs courts to look to statutory purpose and context when Congress uses the term "related." App. Br. 24-25. Moreover, the statutory context—clear evidence of statutory purpose and military-justice regulations that define "records of court-martial" as a term of art and enumerate the documents "related" to that record—confirms this reading of the word "related," as established *infra* in Sections I.B and I.C.

The Supreme Court has warned against deciding the meaning of an entire statutory scheme by relying just on the word "related" because, devoid of context, the word is easy to overread. The government ignores this guidance. As the Supreme Court has explained, the "plain meaning" of the single word "related" in a vacuum does not specify any limits. App. Br. 24-25 (citing *Maracich v. Spears*,

570 U.S. 48, 60 (2013) (quoting *Cal. Div. of Labor Standards Enf't v. Dillingham Constr., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring))).

As Mr. LaBonte noted in his opening brief, the Supreme Court has chastised interpreters of the statutory term "related" who read it with "uncritical literalism," as the COFC and the government do here. App. Br. 25 (citing *N.Y. Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995)). Instead, the Supreme Court has said that courts faced with the task of determining the bounds of "related" should look to "the *objectives* of the [ ] statute as a guide." *N.Y. Conference of Blue Cross & Blue Shield Plans*, 514 U.S. at 656 (emphasis added); *California Div. of Labor Standards Enforcement*, 519 U.S. at 335 (Scalia, J., concurring) ("But applying the 'relate to' provision according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else."); *Maracich*, 570 U.S. at 59-60 (adopting a narrow reading of a statutory exception that included the phrase "in connection with," noting it "must have a limit").

The Supreme Court's instructions apply to this case in an obvious way: Context is important because it demonstrates that "related" requires "a narrower reading" than that offered by the government and accepted by the COFC. *Mellouli v. Lynch*, 575 U.S. 798, 812 (2015). Mr. LaBonte has advanced just that sort of narrower reading: The military-justice system itself delineates what "related"

means in § 1552(f), which importantly does not include a DD-214. *See infra*, Section I.B; App. Br. 29-34.

The government's response does not address the explicit direction in *Mellouli* or try to distinguish *Mellouli*'s reasoning. Nor does the government even attempt a response to *N.Y. Conference of Blue Cross & Blue Shield Plans*' mandate to examine statutory purpose to determine the meaning of "related." Instead, the government repeats without analysis its own assertion that Mr. LaBonte's DD-214 is "tied" in some way to his court martial. Def. Br. 43-44. Unlike Mr. LaBonte, the government offers no affirmative construction of § 1552(f). It seems unsure about the exact bounds of "related," but it is quite sure that Mr. LaBonte's DD-214 falls within those bounds. For support, the government cites "common sense." *Id.* at 44.

The COFC accepted the government's invitation to reduce § 1552(f) to a single limitless word. It should not have. Though the COFC expressed a desire to "careful[ly] examin[e]" the "ordinary meaning and structure of the law itself," Appx11, its plain-meaning analysis did not do so—instead, it whittled the entire

statutory scheme down to one word and then used two dictionary entries to determine its, and therefore the statute's, meaning.

B. The Legislative History of § 1552(f) Confirms That Congress Intended to Protect the Military-Justice System, not Personnel Records.

The COFC disregarded the Supreme Court's directive to consider statutory purpose when construing the word "related." *See* App. Br. 27-28 (Congress wrote § 1552(f) to ensure that civilian administrative boards did not upset legal judgments of the military-justice system). The statutory purpose of § 1552(f) demonstrates that the Board has the authority to correct universal personnel documents issued by the military; what the Board cannot do, for example, is "correct" Mr. LaBonte's verdict sheet to read "not guilty." The incorrect notations on Mr. LaBonte's DD-214 are separate from the substantive legal outcome of his court martial, and changing the former does not affect the latter.

Congress made its purpose clear when it wrote § 1552(f): to maintain the integrity of the military-justice system by ensuring that the boards could not overturn *as a matter of law* any legal judgments under the Uniform Code of Military Justice ("UCMJ"). Under its broad § 1552(a) powers, the Board may correct almost any United States military record—just not the judicial records of a court-martial proceeding or the administrative records arising from the military-

justice system's handling of a court-martial case (similar to, for instance, a clerk's office records in a civilian court). *Id.*

No complicated reconstruction of fuzzy congressional intent is necessary here. As the COFC rightly noted, Congress wrote § 1552(f) to ensure that the boards could not render legal judgments on the results of courts martial by "modify[ing], as a matter of law, findings or sentences of courts-martial." Appx13 (quoting S. Rep. No. 98-53, at 36 (1983)).

The government ignores this clear legislative explanation. It could have addressed the explicit legislative history or offered evidence of its own, but instead it cursorily repeats its overly broad interpretation of § 1552(f). Def. Br. 45 ("[B]y its terms, the provision is not so limited."). The government's argument is circular: It says that the COFC's reading of § 1552(f) is right, because § 1552(f) cannot mean what its drafters said it means, because the COFC's reading of § 1552(f) is right.

The COFC did not meaningfully engage the legislative history, either. Appx13, n.9 ("The Court interprets § 1552(f) based . . . not on its legislative history."). To the extent that it did address the legislative history, it identified the right evidence but drew the wrong conclusion from it. As the COFC itself explained, the § 1552(f)-enacting Congress said that "the provision 'make[s] it clear' that the boards of correction of military records and the discharge review

boards 'have no authority to modify, as a matter of law, findings or sentences of courts-martial.'" *Id*. The COFC is right—but that is evidence *for* Mr. LaBonte, not against him. As even the COFC's reading of the legislative history seems to grant, the purpose of § 1552(f) is to stop the Board from overturning or undermining a court-martial conviction as a "matter of law." *Id.*

Changing Mr. LaBonte's DD-214—a personnel form—to correctly reflect his grant of clemency would not disturb his court-martial conviction. The conviction would still be reflected in the appropriate documents: the records of court martial and related administrative records. Military Law Practitioners Br. 20-23, 25-27 (citing Department of the Navy, Office of the Judge Advocate General, Post-Trial Processing (Sept. 6, 2019), Encl. 2: Post-Trial Checklist, https://perma.cc/MMU2-WTHC (listing reporting requirements following a court-martial conviction, not including any record of a commuted court-martial sentence on DD-214)). The correction would have no legal effect on the outcome of Mr. LaBonte's court martial; it falls outside of the § 1552(f) exception. *See id.* at 25-26 (emphasizing the same).

C. Mr. LaBonte's Construction of § 1552(f) Aligns with Other Statutes and Regulations.

When the COFC held that a DD-214 is "related" to a court-martial case, it failed to grapple with statutory or regulatory context and did not analyze other uses of the term "related" across Title 10 or relevant military regulations. Appx11-13.

In his opening brief, Mr. LaBonte demonstrated that these oversights led the COFC to commit legal error. App. Br. 29-34. The COFC's reasoning boils down to an assertion that 10 U.S.C. § 801(14)'s definition of the term "record . . . when used in connection to a court martial"[3] perfectly aligns with § 1552(f)'s use of the term "records of court-martial," such that "related administrative records pertaining to court-martial cases" defines an entirely separate category of documents. Appx11-13.

That is incorrect. First, the definition of "record" in § 801(14), by its own text, does not even apply to § 1552(f). *See* 10 U.S.C. § 801 ("*In this chapter* (the Uniform Code of Military Justice) . . . (14) The term 'record,' when used in connection with the proceedings of a court-martial, means . . . .") (emphasis added). In other words, the definition of "record" in § 801(14) applies only to Chapter 47 of Title 10—but § 1552 is in Chapter 79. *See* Appx11 ("Courts generally interpret terms of a statute by their plain meaning." (citing *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1749 (2020))); *see also* Def. Br. 31 (conceding that

[3] 10 U.S.C. § 801(14) defines "'record' . . . when used in connection with the proceedings of a court martial" to mean "an official written transcript, written summary, or other writing relating to the proceedings" or "an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced."

§ 801(14) provides definitions for terms only "[i]n this chapter, meaning Chapter 47 (the Uniform Code of Military Justice)").

Further, differences between the language Congress used in each of the two statutes reveal that it did not intend for the definitions set forth in § 801(14) to apply to § 1552(f). In § 801(14), Congress defined "the term 'record,' when used in connection with the proceedings of a court martial." In § 1552(f), Congress used the term "records of court-martial and related administrative records pertaining to court-martial cases." Congress amended the statutes at the same time. Act of Dec. 6, 1983, PL 98-209 (S. 974), 97 Stat 1393 (providing for both amendments). If Congress meant for § 801(14) to define the terms "records of court-martial and related administrative records pertaining to court-martial cases," it would have used the same language in § 1552(f) and § 801(14). It did not. This difference in language corroborates what the statute plainly says: The two provisions do not perfectly overlap.

Finally, if the § 801(14) definition of "record" did apply to § 1552(f), it would, by its plain meaning, apply to both uses of the word "record" in the statute—"records of court-martial" and "related administrative records"—because in both instances, the word "record" is used "in connection with the proceedings of a court-martial." Inserting the § 801(14) definition into both uses of the word "record" in § 1552(f) would create surplusage, and as the government agrees,

courts "hesitate to adopt a statutory interpretation that renders another portion of the same law surplusage." Def. Br. 29 (citing *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1323 (2020)). Thus, the plain language of both statutes reveals that § 801(14) does not define the same universe of records set forth in § 1552(f).

Even assuming, without granting, that the § 801(14) definition of "record" does apply to § 1552(f), the government's claim that Mr. LaBonte has not identified documents that would "fall under the rubric of administrative records 'related' to a court-martial not captured by § 801(14)" is incorrect. Def. Br. 30. Mr. LaBonte identified multiple documents that are "related administrative records" encompassed by § 1552(f) and not § 801(14). App. Br. 31-33; Military Law Practitioners Br. 20-22.

Mr. LaBonte and the Military Law Practitioners provide a definition of § 1552(f) that aligns with other statutes and the military regulations. The Military Law Practitioners, drawing on their experience with both types of records, including as Judge Advocate Generals ("JAGs"), explain that "Congress was not writing on a blank slate" when it crafted § 1552(f). Military Law Practitioners Br. 22. Rather, drawing from existing military-law regulations, Congress set forth two types of documents in § 1552(f): (1) "the court-martial record, which is a transcript or recording of the proceedings, the evidence admitted, the briefs filed, and a

handful of other records related to the composition of the court-martial," and (2) "related administrative records," which are "other materials generated during the course of the court-martial," such as a charge sheet or a convening order. *Id.* at 19.

Congress set forth two types of documents because "records of courts-martial," as used in § 1552(f), is a term of art defined narrowly in the Rules for Courts Martial ("R.C.M.") and Army Regulation 27-10 to include "a transcript or recording of the open sessions of the court-martial, the evidence admitted, and the appellate exhibits." Military Law Practitioners Br. 20. And other parts of Title 10 similarly specify "related documents" as encompassing documents generated throughout the court-martial process. App. Br. 31. Specifically, 10 U.S.C. § 864 refers to "related" documents in context of a JAG's review of a court martial: It provides that "[t]he record of trial and related documents in each case" should be sent to the JAG reviewing the case. 10 U.S.C. § 864; 97 Stat. 1400, Sec. 7(a)(1). That language clearly contemplates "related documents" as documents that arise throughout the court martial, like requests made by the servicemember's counsel, records confirming that the servicemember received notice of their rights, or requests made by the servicemember for copies of their records. Military Law Practitioners Br. 21-22.

Even if this Court were to extend the reach of § 801(14)'s definitions clause and find that it applies to §1552(f), Mr. LaBonte and the Military Law Practitioners

together identify documents that do not fall within § 801(14)—because they are not "an official written transcript, written summary, or other writing relating to the proceedings" or "official audiotape, videotape, or similar material . . . depicting the proceedings," but would be "related administrative records pertaining to court-martial cases" under § 1552(f).

Two examples are the materials set forth in Army Regulation 27-10, ¶ 5-53c: "a copy of the commander's checklist for pretrial confinement, DA Form 7568," and "a copy of the magistrate's memorandum for approving or disapproving pretrial confinement."[4] Neither document is a "writing relating to the proceedings," since each is produced before court-martial proceedings begin, and neither document summarizes, transcribes, or in any way recounts or relays the proceedings.[5]

But these documents are a part of the administration of the military-justice system and a court-martial case (as made clear, for example, by their inclusion in

[4] Military Law Practitioners identify several other documents that do not fall under § 801(14) but constitute "related administrative records" under § 1552(f). Military Law Practitioners Br. 20-22.

[5] The *ejusdem generis* canon counsels that "writing relating to the proceedings" should be construed to mean something similar to "written transcript" or "written summary." *See, e.g.*, *Nielson v. Shinseki*, 607 F.3d 802, 807 (Fed. Cir. 2010) ("Under the rule of *ejusdem generis*, which means 'of the same kind,' where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified.").

military-justice regulations) and thereby constitute "related administrative records pertaining to court-martial cases" outside the reach of the boards. As set forth *supra*, these documents are the body of records that Congress meant to shield from the Board's review, to protect the integrity of the military-justice system.[6]

Finally, regulations and statutes concerning the DD-214 reveal it is not a "related administrative record pertaining to court-martial cases" under § 1552(f). Military Law Practitioners Br. 23-24. The government's insistence that the "DD-214 form is related to a court-martial by virtue of the fact that Mr. LaBonte was discharged pursuant to a court-martial," Def. Br. 32, ignores the reality of the entirely separate entities at issue here within the Army—its judicial functions, and

[6] The government claims that 10 U.S.C. § 854's definition of the "record of trial" encompasses "all of the court-martial documents cited by the Military Law Practitioners by reference to the various Rules for Courts-Martial and provisions of Army Regulation 27-10," because "the statutory definition of the word 'record' used throughout section 854 is found in section 801(14)." Def. Br. 31. This claim is incorrect and ignores context. The Rules for Courts-Martial and the Army Regulations repeatedly discuss the "record of trial" and "record of court martial" as distinct sets of documents. Military Law Practitioners Br. 20-21. The government's reading would also necessarily mean that, if the President declined to "prescribe by regulation" the contents of the record of trial under § 854(c), there would be no record of a court-martial proceeding at all—rendering null the statutory provisions referring to records of a court martial, such as § 1552(f). The correct reading of § 854(c), rather, is that it lets the President regulate what constitutes the "record of trial" beyond the court-martial record itself, as the President has done in the regulations the Military Law Practitioners cite. *Id*.

its human resources functions (and Mr. LaBonte's clemency as discussed *infra*, in footnote 9).

The government's position is analogous to the argument that because a human resources department cannot overturn a criminal conviction, it also could not remove references to a criminal sentence from a routine personnel form—even after that sentence is commuted. In fact, *failing* to remove a "court martial" reference after a servicemember has received clemency renders the DD-214 inaccurate and undermines the grant of clemency: Once a punitive discharge stemming from a court-martial sentence is commuted, the court martial and its punitive discharge sentence are no longer the reason for the servicemember's discharge. Military Law Practitioners Br. 26. That is why, in practice, the boards do in fact appropriately amend DD-214s to remove "court martial" as the reason for separation after issuing clemency on a punitive discharge sentence. App. Br. 38-39.

The above understanding is consistent with—in fact informed by—the experience of the Military Law Practitioners, who as JAGs tried and reviewed hundreds of court-martial cases and never to their knowledge came across a DD-214. Military Law Practitioners Br. 23-24. The above understanding is also consistent with the statutory and regulatory frameworks at issue, which govern DD-214s entirely separately from the military-justice system. App. Br. 33-34. It is

also consistent with the reality that even when servicemembers are convicted by courts martial, their DD-214s often do not reference their courts martial. Military Law Practitioners Br. 25. And finally, the government's argument relies on the assumption that the DD-214 has some legal effect on the termination of a soldier's service, which, explicitly, Army regulations state it does not. App. Br. 34 (citing Army Reg. 635-8, ¶ 5-1).

While the government seeks to cast the COFC's decision narrowly, Def. Br. 49, the COFC's decision in fact could have broader effects, as the Military Law Practitioners warn. If the Board could not amend a DD-214 for any servicemember whose DD-214 lists a court martial, such as those who were dishonorably discharged after being convicted by courts martial under "Don't Ask, Don't Tell," the military could be prevented from removing stigmatizing references to courts martial on servicemembers' personnel records even after making sweeping policy changes like the repeal of "Don't Ask, Don't Tell." Military Law Practitioners Br. 30-31. The government has no response, and apparently concedes this point.

The government's reading of § 1552(f) would create other absurdities. For instance, under the government's view, the Board would be unable to correct the record of a servicemember whose court-martial sentence included a change in paygrade in the event that the change was incorrectly processed. The

government's argument would require that the Army continue to pay that servicemember at the wrong rate just because the paperwork about their paygrade listed the words "court martial." That cannot be the meaning of § 1552(f).

D. Mr. LaBonte's Interpretation Comports with Canons of Statutory Construction.

The statutory and practical context show § 1552(f)'s clear meaning, as demonstrated above. However, to the extent this Court concludes that § 1552(f)'s meaning is ambiguous, applicable canons of construction confirm Mr. LaBonte's interpretation.

In his opening brief, Mr. LaBonte highlighted three canons of construction in particular. First, he argued that, given § 1552's humanitarian and remedial nature, exceptions to § 1552(a)'s broad remedial power should be construed narrowly, consistent with the principle that ambiguities in remedial statutes be resolved in favor of those for whose benefit the statutes were passed. App. Br. 35-36. Second, Mr. LaBonte invoked the pro-veteran canon, which advises the same in a veterans-law context. *Id.* (emphasizing that Congress passed § 1552 primarily to benefit veterans). Third, Mr. LaBonte relied on the canon against absurdities to establish that an overly broad reading leads to consequences Congress is unlikely

to have intended, including stretching § 1552(f)'s reach to military retirement claims. *Id.* at 38-40.

The government resists these canons mainly for two reasons. First, it says the canons generally do not apply because the meaning of the statute is clear. Def. Br. 56. Second, it argues these canons do not apply to *this* case because Mr. LaBonte was court-martialed; for support, the government cites solely to § 1552(f). Def. Br. 50-52. Neither objection has merit.

Regarding the first contention, Mr. LaBonte agrees that the meaning of the provision at issue is clear, but in the other direction: "Related" does not encompass a DD-214.[7] *See supra*, Section I.A. However, should this Court find the provision ambiguous, canons of interpretation support Mr. LaBonte's position that § 1552(f)(1) does not encompass a DD-214. *See* App. Br. 24-26, 35-40 (noting cases where the Supreme Court invoked nontextual factors, including canons, to interpret the meaning of "related" or similar terms). The Supreme Court has

[7] The government invokes truisms—for example, stressing that Congress "is vested with the authority to limit" the Board's powers as it sees fit—to brush aside the canons of construction. Def. Br. 52. This is beside the point. Mr. LaBonte does not deny the extent of congressional power in this area; rather, the issue here is the scope of the limitation Congress intended by enacting § 1552(f).

cautioned against an overly broad or literal reading of "related," as do applicable canons. *Id.*

The government's second contention also fails. Congress did not enact § 1552(f) to relegate court-martialed servicemembers into a caste of "unfavoreds"—especially in light of § 1552(f)(2), which preserves the Board's full authority under § 1552(a) to act "on the sentence of a court-martial for purposes of clemency."[8] The government cites to no authority supporting its contention that the applicable canons single out court-martialed servicemembers. In fact, § 1552(f)—the only authority the government cites—distinguishes between records, not servicemembers. *See* 10 U.S.C. § 1552(f) ("With respect to *records* of courts-martial and related administrative *records* . . . .") (emphasis added). Moreover, even if a meaningful distinction can exist based on a court-martial conviction, the distinction does not apply to Mr. LaBonte because he has received clemency—a relief not every court-martialed servicemember receives.

Ignoring the applicable canons in this case because Mr. LaBonte was court-martialed, as the government invites this Court to do, would also lead to absurd results. First, it would lead to an overly broad interpretation that stretches

[8] The government's denigration of Mr. LaBonte's service to the country, Def. Br. 53, does not strengthen its argument. Mr. LaBonte's service amounts to much more than the conviction he received while suffering from debilitating, untreated physical and mental injuries.

§ 1552(f) to affect matters beyond what Congress intended: Congress did not enact § 1552(f) to make it *harder* for servicemembers to pursue military retirement benefits after receiving clemency.[9] Second, ignoring canons in resolving any ambiguities in § 1552(f) would disrupt settled practice among military-law practitioners both within and outside of the government.[10] This disruption would

[9] Granting disability retirement here comports with the congressional intent behind § 1552(f)—even if it requires removal of the "court martial" notation from Mr. LaBonte's DD-214. App. Br. 38-40; Amicus Brief of National Veterans Legal Services Program ("NVLSP Br.") 16-17; Military Law Practitioners Br. 25. In fact, Mr. LaBonte's clemency alone should lead the Board to amend his DD-214's "court martial" reference, because a DD-214 would not reflect "court martial" as the reason for separation if a court-martialed servicemember does not receive a "punitive discharge." As the Military Law Practitioners explain, not every court-martial conviction leads to a punitive discharge. Other available sentences include fines, reprimand, and confinement, which can allow a servicemember to continue service and be separated later for reasons unrelated to the court martial; these servicemembers' DD-214s would not reflect "court martial" as the reason for separation. Military Law Practitioners Br. 15, 25-26. Thus, because Mr. LaBonte has obtained clemency from his initial punitive discharge, his DD-214 should not reflect "court martial" as the reason for separation.

[10] Army leadership's understanding of § 1552(f) confirms Mr. LaBonte's interpretation. After the Board's initial denial of Mr. LaBonte's claim in 2017, the Deputy Assistant Secretary of the Army ("DASA") determined that there was "sufficient evidence to grant additional relief" and referred the case back for reconsideration, stating that if the reviewing entity determined that Mr. LaBonte should have been medically retired, Mr. LaBonte's administrative separation would be voided "to issue him the appropriate separation" retroactively. Appx198. This DASA letter confirms that § 1552(f) is no bar to Mr. LaBonte's disability retirement and that the Army Secretary conditionally authorized a retroactive retirement under 10 U.S.C. § 1221. The government contends that the DASA was confused about Mr. LaBonte's discharge status, Def. Br. 12, but she was not: Because he had received clemency on his court-martial conviction, Mr. LaBonte was indeed under administrative separation at the time. The government's

also deny Mr. LaBonte relief that other similarly situated servicemembers have properly received, through the same procedures and before the same boards. App. Br. 38-40; NVLSP Br. 7.

Mr. LaBonte and *amici* have cited administrative cases showing that, in practice, military corrections boards grant the relief at issue here through clemency. App. Br. 22-23 (citing administrative case in which court-martialed servicemember's narrative reason for separation was amended after grant of clemency); NVLSP Br. 7 (citing administrative case and explaining circumstances where a DD-214 would not contain "court martial" as reason for separation). These cases demonstrate two important points. First, they undermine the government's assertion that Mr. LaBonte has already received all remedies available to him through clemency. Def. Br. 52-53, 55.[11] Second, these cases show how the corrections boards understand and actually apply § 1552: The boards have not understood § 1552(f) as an impediment to issuing the remedy Mr.

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understanding of § 1552(f) conflicts with both Army Leadership's and practitioners' understanding.

[11] The government's contention that Mr. LaBonte has received all relief available to him through the ADRB's grant of clemency is wrong. The government says Mr. LaBonte "does not identify any error" in his DD-214 and that his DD-214 cannot reflect disability retirement because "he was never retired from the Army for disability." Def. Br. 55, 56. But the DD-214 can be revised if he is granted *retroactive* disability retirement, and moreover, to correct the ABCMR's oversight in failing to amend his narrative reason of separation, as the corrections boards have done in similar cases through clemency. App. Br. 22.

LaBonte requests. Canons of construction favor an interpretation that avoids an absurd result, and thus advise against singling out Mr. LaBonte based on a construction of § 1552(f) broader than that intended by Congress.

In short, to the extent this Court finds § 1552(f)'s statutory language ambiguous, the applicable canons of construction support Mr. LaBonte's interpretation. This Court should reject the COFC's reading, which conflicts not only with the applicable canons, but also with the government's own practice and guidance, the practical experiences of JAGs and other military-law attorneys, and congressional intent. Amending Mr. LaBonte's DD-214 would neither disturb the finality of his court-martial conviction nor require revising any of the judicial records from that proceeding (or associated clerk's-office-type documents). The Board thus retains its § 1552(a) authority to grant Mr. LaBonte the relief he seeks, consistent with the separate constraints of § 1552(f).

II. The Board May Grant the Relief Mr. LaBonte Seeks Without Changing His DD-214.

The COFC held that Mr. LaBonte's "DD-214 would need to be changed in order to grant [him] the relief he seeks." Appx11. In his opening brief, Mr. LaBonte demonstrated that the COFC's analysis was incorrect, and that the Board may in fact grant the relief Mr. LaBonte seeks without changing his DD-214. App. Br. 40-43. The government fails to refute Mr. LaBonte's analysis or point to any

authority requiring the Board to amend Mr. LaBonte's DD-214 before granting him relief. Def. Br. 57-60.

The COFC erred in its conclusion that amending the DD-214 is necessary to grant relief here. The court based its conclusion on a misunderstanding of the Board's decision. App. Br. 41-42. In fact, the COFC's reading of the Board's decision appears to be the COFC's *only* justification for its conclusion: "The Board itself therefore has answered the question; it would need to correct the plaintiff's DD-214 in order to grant the relief the plaintiff seeks." Appx11. But as Mr. LaBonte has demonstrated, the COFC misread the Board decision, which "never stated that amending the DD-214 form was *necessary* to grant disability retirement." App. Br. 42.

The government ignores this argument,[12] and instead merely restates its stance: The COFC, as a court, had the authority to interpret the statute at issue, and a DD-214 is necessary to grant disability retirement because the COFC held so. Def. Br. 58-59. Mr. LaBonte does not dispute the COFC's authority to interpret statutes. He rather disputes the specific interpretation the COFC adopted in *this* case—an interpretation based on a misreading that the government nowhere attempts to defend or explain. Mr. LaBonte's critique thus stands unrefuted.

[12] The government simply states that "Mr. LaBonte's allegation . . . is beside the point." Def. Br. 58.

Moreover, given the *de novo* standard of review, this Court owes no deference to the COFC holding. App. Br. 17 (noting standard of review); Def. Br. 24 (same).

Aside from its reliance on the COFC's erroneous conclusion, the government simply fails to cite any rule—statutory or otherwise—for its bare assertion that retroactive disability retirement is unavailable to a servicemember whose DD-214 says "court-martial." Def. Br. 57-60. The government's failure to identify any legal authority for this proposition is an implicit concession that no statute or regulation prohibits the Board from granting the relief Mr. LaBonte seeks, *without* changing his DD-214.

The government attempts to distract from its inability to identify any legal authority requiring amendment of a DD-214 as a condition of disability retirement by quibbling with (but failing to substantively engage) Mr. LaBonte's own citations. Mr. LaBonte points to three ABCMR decisions to demonstrate that "the Board can, and does, grant disability retirement by issuing retirement orders without ordering a specific correction to the veteran's DD-214." App. Br. 41. The government seeks to distinguish these ABCMR cases on the ground that they did not involve "a claim for disability retirement benefits by a service member who was discharged by a court-martial, or that the decision implicated subsection 1552(f)'s limitations." Def. Br. 57-58. The government misses the point: Regardless of the Board's justifications in these cases, they still demonstrate that

the ABCMR can, and does, issue new retirement orders without correcting, examining, or even mentioning a DD-214.

CONCLUSION

Mr. LaBonte served his country faithfully and paid a serious price for it. He has experienced debilitating mental and physical symptoms from the disabilities he incurred while fighting for his country in Iraq, and the Army should take responsibility for its past failure to diagnose, care for, and retire its wounded soldier.

Mr. LaBonte has proposed an interpretation of § 1552(f) that accords with statutory context and military practitioners' understanding of the law: A DD-214 is not a "related administrated record" under § 1552(f), and Congress did not divest the Secretary of the Army of the power to grant retirement in this case. Mr. LaBonte has also established that, in practice, the Board grants disability retirement to similarly situated servicemembers, sometimes without even amending their DD-214s. The COFC erred when it held that § 1552(f), which prevents the Board from overturning Mr. LaBonte's court-martial conviction as a matter of law, also prevents the Board from making routine corrections to his personnel forms. And the COFC erred when it held that the Board cannot retire Mr. LaBonte without removing the words "court martial" from his DD-214, even

though the government apparently agrees that no binding statute or regulation requires the removal of "court martial" as a precondition.

For these reasons, Mr. LaBonte respectfully requests that the Court hold that § 1552(f) does not prevent the Board from amending Mr. LaBonte's DD-214, or in the alternative, that Mr. LaBonte may be medically retired without amending his DD-214, and remand to the COFC for further proceedings.

Dated: September 27, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Circuit Rule 32(a). This brief contains 6985 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word version 2107 in 14-point Times New Roman.

CERTIFICATE OF SERVICE

I hereby certify that on September 27, Appellant's foregoing Reply Brief was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

Dated: September 27, 2021

Respectfully submitted,

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