

TABLE OF CONTENTS

PRELIMINARY STATEMENT, ¶¶ 2-30	1
PARTIES, JURISDICTION AND VENUE, ¶¶ 31-34	6
STATEMENT OF FACTS	
Petitioner’s Decision To Join The Navy, ¶¶ 35-37	7
Petitioner’s Previously Held Religious Beliefs In Support Of “Just War”, ¶¶ 38-39.....	8
Petitioner Graduates From The Naval Academy And Johns Hopkins, ¶¶ 40-42	8
Petitioner Reads “Choosing Against War” And Continues To Read To Support His Naval Service, ¶¶ 43-45	9
Petitioner’s Beginning Doubts About His Participation In Any War Prompt His Response On A Psychological Screening Test, ¶¶ 46-48	10
Petitioner Speaks To Civilian Church Leaders And A Navy Chaplain, From Whom Petitioner First Learns About The Possibility Of Applying For CO Status, ¶¶ 49-52.....	10
Petitioner Decides That He Is A Conscientious Objector, ¶¶ 53-54	11
Petitioner’s First Conscientious Objector Application: The Navy Psychologist And Navy Chaplain Believe Petitioner Is Sincere, But The Navy Denies His Application Without Any Basis In Law Or Fact, After A Hearing With Many Legal And Procedural Errors, ¶¶ 55-79.....	11
Petitioner’s Command Recommends Against Recognizing Petitioner As A Conscientious Objector, ¶¶ 80-81	16
The Department Of The Navy Denies Petitioner’s Application, ¶¶ 82-86	17
The Navy Transfers Petitioner To The Naval Submarine School In Groton, Connecticut; Petitioner “Requests Mast” To Inform His Command Of His Conscientious Objector Beliefs, ¶¶ 87-99.....	18
Petitioner Submits A Second CO Application; The Navy Conducts A Second CO Hearing; The Navy Denies Petitioner’s Second Application, ¶¶ 100-138.....	21

The Clergy And Theologians Supporting Petitioner’s Second Application Confirm The Depth And Sincerity Of Petitioner’s Conscientious Objection, ¶¶ 139-170..... 29

Other Evidence In The Record Supports The Depth And Sincerity Of Petitioner’s Conscientious Objector Beliefs, ¶¶ 171-193..... 39

The Department Of The Navy Unlawfully Denied Petitioner’s CO Applications: Both Of Petitioner’s CO Processes Were Infected With Unlawful Religious Bias, ¶¶ 194-223 47

The Report Of Results Recommended Denial Of Petitioner’s Request For Conscientious Objector Status Based On The Erroneous Position That Petitioner Could Serve As A Noncombatant Consistent With His Religious Beliefs, ¶¶ 224-232..... 57

The Second IO Report Included Incomplete And Biased Witness Summaries, ¶¶ 233-255 59

The Department Of The Navy Unlawfully Denied Petitioner’s CO Application: The Second IO Report Contained Many Other Factual, Legal And Procedural Errors, ¶¶ 256-268..... 67

Petitioner’s Commanding Officer’s Recommended Denial, And The Department Of The Navy’s Denial, Lacked Any Basis In Fact And Failed To Meet Applicable Legal Standards, ¶¶ 269-282..... 70

Petitioner Is Suffering Irreparable Harm Because Of His Continued Navy Service Which Is Contrary To His Deeply Held Religious Beliefs, ¶¶ 283-301..... 73

Petitioner Has Exhausted His Administrative Remedies And Has No Adequate Remedy At Law, ¶¶ 303-304..... 77

Petitioner Has Met All Of The Legal Requirements For Recognition As A 1-O Conscientious Objector, ¶¶ 305-324..... 77

The Navy Failed To Comply With The Procedural Requirements Of MILPERSMAN 1900-020, ¶¶ 325-333 80

CLAIMS FOR RELIEF, ¶¶ 334-356 82

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

-----X
MICHAEL J. IZBICKI, :
Ensign, U.S. Navy, :
 :
Petitioner, :
 :
v. : **Case No. 3:10 CV 01729-VLB**
 :
RAY MABUS, :
Secretary of the Navy; :
COMMANDING OFFICER, :
Naval Submarine School, Groton, :
Connecticut, :
 :
Respondents. :
-----X

**PETITION FOR A WRIT OF HABEAS CORPUS AND OTHER RELIEF
BY A PERSON IN MILITARY CUSTODY**

1. Petitioner Michael Izbicki, an Ensign in the United States Navy on active duty (“Petitioner”), and a Conscientious Objector (sometimes hereafter “CO”), petitions this Court for a Writ of Habeas Corpus and other relief challenging his military custody on the grounds that the Navy has twice unlawfully denied his application for discharge as a Conscientious Objector

(1-O). In support of his Petition, he states:

PRELIMINARY STATEMENT

- 2. Petitioner can no longer serve in the United States Navy because of his deep and sincerely held religious beliefs.
- 3. Following a family tradition of military service, Petitioner graduated from the United States Naval Academy. His religious beliefs did not begin to conflict with his Navy service until after graduation and he had begun submarine training.

4. In February 2009 Petitioner responded to a question on a Navy-required psychological examination that he could not launch a nuclear missile.
5. Petitioner's response came from his religious beliefs, and from his growing doubts about whether as a Christian he could participate in war and take another's life.
6. Through a period of intense religious study and reflection, supported by Navy chaplains and civilian religious leaders, and his own rigorous reading and prayer, Petitioner concluded that he was a conscientious objector and that he had no choice, because of his religious beliefs, but to give up the career for which he had aspired and trained, and to seek discharge from the Navy.
7. Petitioner's conscientious objector beliefs draw from his faith in Jesus and the Sermon on the Mount. He writes in his CO applications:

I am a Christian. My Christian convictions preclude the use of violence; I cannot take someone else's life, nor can I aid others in doing so. Therefore, I cannot participate in war in any form.

I believe that Jesus Christ calls all men to love each other, under all circumstances. I believe his teaching forbids the use of violence. I take the sermon on the mount literally.

(MI 2.)¹

8. Four ordained members of the clergy (including two Navy chaplains), the Clerk of the Westerly Friends Meeting, and two academic theologians (one of whom is also an ordained minister), have affirmed the depth and sincerity of Petitioner's religious opposition to participation in war in any form.

¹ All documents referenced in this Petition are attached and have been Bates-numbered for the convenience of the Court. They are cited here as "(MI __.)" Petitioner's relevant medical and psychological records will be filed under seal; blank pages indicating the sealed records are included in the copy of the Petition for public filing. The record citations included in this Petition are illustrative, not exhaustive.

9. Petitioner twice applied to the Navy for recognition as a conscientious objector, first in October 2009 and again in March 2010. The Navy has failed and refused to acknowledge that Petitioner is a conscientious objector, and it has twice denied his conscientious objector applications, in proceedings rife with legal and procedural errors.² The Navy can only deny a conscientious objector application where there is a basis in fact, and the Navy had no basis in fact to deny either of Petitioner's applications.

10. In denying Petitioner's first conscientious objector application, the Navy impermissibly tested the depth and sincerity of Petitioner's religious beliefs against participation in war with a Roman Catholic catechism (Petitioner is not Catholic), and against the legally impermissible standard of whether "his separation from the Navy would reduce the possibility of his sinning in the future." (MI 77.)

11. The Navy also wrongfully faulted Petitioner for being unable to recite all of the Ten Commandments, and rejected his religious beliefs about sin because Petitioner did not believe that some sins were worse than others.

12. In denying Petitioner's second conscientious objector application, the Navy showed extreme religious bias against Petitioner's Christian beliefs and the beliefs of his Quaker witnesses, likening Quakerism to a Jim Jones-like cult.

13. The Navy accused Petitioner of faking his commitment to the Westery Friends Meeting, because, according to the Navy, as a "saved" Christian who believed in Jesus Christ, Petitioner could not possibly attend a Quaker Meeting

² The applicable regulations are Department of Defense Instruction DoDI 1300.06 and Department of Navy Instruction MILPERSMAN 1900-020; they are attached at MI 645-675.

with true sincerity, because, according to the Navy's Investigating Officer, Quakers do not believe in Jesus Christ.

14. The Navy also improperly tested the depth and sincerity of Petitioner's religious beliefs against participation in war with Pastor Rick Warren's interpretation of the Bible and "what the bible teaches about war and its conclusion that Jesus endorses participation in war." Petitioner's religious beliefs are not the same as Pastor Rick Warren's. (MI 175-176-d.)

15. The Navy also disagreed with Petitioner's religious belief that the Bible is not inerrant, and not fully based on historical fact, which led the Navy to doubt the sincerity of Petitioner's deeply held faith.

16. The Navy also disagreed with Petitioner's religious beliefs about salvation, and with Petitioner's witnesses' religious beliefs about salvation.

17. The Navy's application of these religious tests to Petitioner and his witnesses, and the Navy's extreme bias against Petitioner's own religious beliefs against participation in war, and the religious beliefs of Petitioner's witnesses, violates the Constitution, applicable law and military regulation.

18. The Navy also concluded that Petitioner failed to satisfy a "service to others emanating out of his faith" or a "sustained actions of service" requirement to prove that he is a conscientious objector, and used this "service" requirement as a further basis to deny Petitioner conscientious objector status. (MI 163, 642.) Such "service" is not a legal requirement for recognition as a conscientious objector.

19. The Navy disregarded record evidence of Petitioner's service before and during his Navy service, including his residence and participation in an

intentional pacifist Christian community, and the limitations on the type and extent of service Petitioner has been able to perform consistent with his Navy duties.

20. Petitioner has, since October 2009, consistently asked the Navy to discharge him from the Navy as a conscientious objector because his religious beliefs against participation in war in any form do not allow him to continue to serve the Navy in any capacity, even in a noncombatant status.

21. The Navy nevertheless insists, without any basis in fact, that Petitioner should be able to perform noncombatant service. In so doing, the Navy has persistently disregarded the statements of independent witnesses and Petitioner's own consistent written and oral statements.

22. While he has no choice but to continue with his daily Navy duties, Petitioner is doing whatever he can to lead a life consistent with his religious beliefs against violence and war.

23. To minimize his connection with the Navy, Petitioner has declined promotion to Lieutenant (Junior Grade). In so doing, he accepts a loss of stature, reduced military pay and a reduced starting salary in the civilian world.

24. To communicate his beliefs about making the world a more peaceful place, Petitioner is writing articles, for publication, advocating nuclear disarmament.

25. To be able to live a life that to the greatest extent possible is consistent with his religious conscientious objector beliefs, Petitioner lives at St. Francis House, an intentional peace-based Christian community in New London, Connecticut, where he prays daily alone and with the community, and

participates in its peace Gospel-driven activities as much as is possible given his Navy duties.

26. To further support his religious nonviolent beliefs, Petitioner worships on Sundays with the Westerly Friends Meeting.

27. Petitioner is prepared to meet honorably all of the moral, religious and legal consequences of his conscientious objector beliefs.

28. Petitioner is also prepared to face the legal consequences of his religious beliefs should he be given an order that his religious beliefs would call upon him to refuse.

29. Petitioner has met all of the legal requirements for recognition as a conscientious objector. The Navy has no legal basis, and no basis in fact, for denying Petitioner conscientious objector status.

30. Petitioner seeks habeas corpus relief, and release from the Respondents' custody as a conscientious objector with an honorable discharge.

PARTIES, JURISDICTION AND VENUE

31. Petitioner graduated from the United States Naval Academy at Annapolis, Maryland in May 2008 and was commissioned as an Ensign in the United States Navy upon graduation. He is a United States citizen. He is currently stationed at the Naval Submarine School in Groton, CT.³

32. Respondent Ray Mabus is the Secretary of the Navy. He is the official of the United States government charged with the control and administration of all Navy personnel and affairs wherever situated or assigned. He is sued in his official capacity.

³ The school is located at the Navy base which formerly fell within the New London city limits in Connecticut.

33. Respondent Commanding Officer, Naval Submarine School, Groton, Connecticut is the Navy official responsible for exercising command and control over Petitioner. He is sued in his official capacity.

34. This Court has jurisdiction pursuant to 28 U.S.C. §§ 2241 (Habeas Corpus), 1361 (Mandamus) and 1331 (Federal Question). This court has authority to issue a writ of habeas corpus and to grant relief as law and justice require under 28 U.S.C. § 2241(a)(c)(1) because as an officer of the United States Navy, the Petitioner is “in custody under or by color of the authority of the United States,” and because the Petitioner and his custodian are present within the jurisdiction of this Court. See Rumsfeld v. Padilla, 542 U.S. 426 (2004).

STATEMENT OF FACTS

Petitioner’s Decision To Join The Navy

35. Petitioner was raised in a patriotic, moderately religious household, with a family history of military service. He grew up near the Marine base Camp Pendleton in California, was an admirer of Gen. Colin Powell, and was “enamored with the courage and competence” of America’s soldiers. (MI 4-5.)

36. Petitioner felt called to serve his country after 9/11. He was an excellent student in high school and a National Merit Scholar. Petitioner received generous scholarship offers from many universities. Petitioner accepted an offer from the United States Naval Academy (the “Academy”) at Annapolis, MD. (MI 5.)

37. In high school, Petitioner attended an evangelical Christian church and was religiously “saved.” While at the Academy, Petitioner continued to attend Christian religious services, both inside and outside the Academy. (MI 4-5.)

Petitioner's Previously Held Religious Beliefs In Support Of "Just War"

38. Over the years of his Academy attendance, Petitioner learned that it was appropriate and necessary for Christians to engage in just warfare. In some Academy classes, Petitioner learned more about just warfare. Petitioner did not dispute this teaching. (MI 5-7.)

39. While at the Academy, Petitioner began "serious religious reflection outside of church." He "continued to daily read [his] Bible and pray" and "also began reading other books about religion." While "the Academy made sure [Petitioner] was challenged to grow mentally and physically," this reading "challenged [him] to grow spiritually." As Petitioner wrote:

I wanted to know why I should believe in the Bible. To this end I began reading Biblical commentaries, and looking into non-Biblical faiths. I read books arguing for atheism as well as histories of Islam, Judaism, and Christianity. I purchased an English translation of the Qu'ran to see for myself what Muslims believe. I was especially interested in the historicity of the Biblical accounts of Jesus. I read about Biblical archeology, noncanonical writings of the early church, and commentaries on those writings. This helped me understand the ideas of sin and salvation, and greatly strengthened my faith. I did not yet see a conflict between Christianity and war.

(MI 5.)

Petitioner Graduates From The Naval Academy And Johns Hopkins

40. Petitioner was able to complete his Academy studies a semester ahead of schedule. The Navy selected him for advanced graduate study in Computer Science at Johns Hopkins University for the spring 2008 semester. Petitioner graduated from the Academy in May 2008, and he continued at Johns Hopkins for an additional semester (fall 2008). He was awarded a Masters of Science degree by Johns Hopkins in December 2008. (MI 6-7.)

41. When Petitioner graduated from the Academy, he “was excited about [his military] service” and “believed it was [his] calling as a Christian. [He] wanted to have a positive impact on the world by having one on the Navy.” (MI 7.)

42. After graduating from the Academy in the spring of 2008, Petitioner moved to Laurel, Maryland, and joined the First Baptist Church in Laurel. He was an active member, attending frequent services and study sessions, volunteering, and participating in singles group activities. Petitioner also continued his religious self-study and his military education, reading books about naval history and military strategy. (MI 7.)

Petitioner Reads “Choosing Against War” And Continues To Read To Support His Naval Service

43. Petitioner read the book Choosing Against War by John Roth. Petitioner described reading the book as a “turning point in [his] religious life,” because the book presented the “first Biblical argument I saw that Christians were called to nonviolence.” He discovered that he agreed with the author’s basic premises: “that all humans are flawed, that Christians are called to love their enemies, and that Jesus commands Christians to turn the other cheek when struck.” (MI 7-8.)

44. Petitioner wanted to reconcile the views in the Roth book with his own beliefs, in order to support his continued Naval service. He continued to read and study just war theory. (MI 8.)

45. Petitioner was not yet convinced that war was wrong in all circumstances. Petitioner believed he could still participate in war and serve in the military as a Christian. He planned to continue his military service. (MI 8.)

Petitioner's Beginning Doubts About His Participation In Any War Prompt His Response On A Psychological Screening Test

46. In January 2009, after graduating from Johns Hopkins, Petitioner was assigned to the Naval Nuclear Power Training Command ("NNPTC") in Charleston, South Carolina, as preparation for his assignment to a submarine.

47. During the indoctrination week at NNPTC, Petitioner took a required psychological evaluation test, which included a question asking whether Petitioner would launch a nuclear missile if given the order to do so. Petitioner responded that he could not. Petitioner's response flagged him for interview with a Navy psychologist. (MI 8, 209.)

48. Petitioner met with the Navy psychologist twice, as required. Petitioner's response also led him to further prayer, study and reflection about his religious beliefs, and about whether he could participate in war. (MI 8.)

Petitioner Speaks To Civilian Church Leaders And A Navy Chaplain, From Whom Petitioner First Learns About The Possibility Of Applying For CO Status

49. Petitioner hoped and wanted to reconcile his religious beliefs with military service, and used all means available to him to do so. He prayed. He studied. The Navy psychologist recommended he speak to a Navy chaplain, and he did so. (MI 8, 210.)

50. Petitioner also sought counseling from civilian church leaders at the Northwood Baptist Church, which he had joined when he moved to Charleston in January 2009. At this point, Petitioner still hoped and believed that his religious beliefs could be reconciled with continued military service. (MI 8, 84, 249.)

51. In April 2009, the Navy chaplain who was counseling Petitioner told him about the Navy's conscientious objector regulation, and encouraged him to start

writing down his answers to the questions in the regulation, as a way of clarifying and evaluating his religious beliefs about participation in war. (MI 15, 215, 587.)

52. Petitioner had at least three meetings with the Navy chaplain in this period, seeking his counsel regarding his conscientious objector beliefs. (MI 210.)

Petitioner Decides That He Is A Conscientious Objector

53. In or about the summer of 2009, having taken the counsel of the military chaplain, and of civilian religious leaders, and guided by his religious study, prayer and reflection, Petitioner concluded that he was a “1-O” conscientious objector and could not participate in war in any form, not even in noncombatant service. This meant that he would seek discharge from the Navy as a conscientious objector.⁴ (MI 15, 210.)

54. In early August 2009 Petitioner graduated from NNPTC. He worked on his conscientious objector application. (MI 210.)

Petitioner’s First Conscientious Objector Application: The Navy Psychologist And Navy Chaplain Believe Petitioner Is Sincere, But The Navy Denies His Application Without Any Basis In Law Or Fact, After A Hearing With Many Legal And Procedural Errors

55. Having completed NNPTC, Petitioner’s next training assignment was to Nuclear Propulsion Training Unit (“NPTU”). Petitioner submitted his completed conscientious objector application (“First CO Application”) on October 10, 2009,

⁴ A “1-O” Conscientious Objector holds beliefs that are opposed to participation in war in any form, and such opposition will not permit noncombatant service. A “1-A-O” Conscientious Objector holds beliefs that, while opposed to participation in war, will allow the service member to engage in noncombatant service. The applicant, not the Navy, chooses whether to apply for 1-O or 1-A-O status, and 1-A-O status may not be offered to a 1-O applicant as a compromise. See MILPERSMAN 1900-020 ¶¶7, 9; Department of Defense Instruction 1300.06 ¶3.1, E2.2.1.

as soon as he had a formal chain of command at NPTU to which the application could be submitted. (MI 59, 210.)

56. Petitioner's First CO Application explained in detail the evolution of his conscientious objector beliefs and demonstrated that his beliefs against participation in war were sincere and deeply held. (MI 59-68.)

The First Psychologist Report And The First Chaplain Report

57. In accordance with applicable regulations, Petitioner was evaluated by a Navy Clinical Psychologist ("First Navy Psychologist"), who found that Petitioner "appears sincere in his report of reasons to pursue conscientious objector status" with "no evidence of a contrary nature to his reported position." (MI 70.)

58. In accordance with applicable regulations, a Navy Chaplain with the rank of Lieutenant ("First Navy Chaplain") was selected by the Navy and met with Petitioner to evaluate the depth and sincerity of Petitioner's beliefs. The First Navy Chaplain affirmed the depth and sincerity of Petitioner's beliefs, and he recommended that Petitioner be recognized as a conscientious objector. (MI 71.)

59. The First Navy Chaplain concluded that Petitioner "possess[ed] great self awareness." Petitioner "impressed [him] with the depth of his personal study into the background of Conscientious Objection." He observed that Petitioner "has obviously given his rationale a great deal of study, reflection and personal devotion consistent with that found in the wide degree of involvement he has in his Faith life and with the Faith Communities with which he worships." The First Navy Chaplain found Petitioner's beliefs "quite plausible and sincere" and concluded that Petitioner was "very much a person who by reason of religious

training and belief has a firm, fixed and deeply sincere objection to participation in war of any form, or the bearing of arms.” (MI 71.)

60. The First Navy Chaplain recommended that Petitioner’s application for conscientious objector 1-O status be given “positive consideration.” (MI 71.)

The First Investigating Officer Hearing

61. In accordance with applicable regulations, Petitioner then met with the Navy-appointed Investigating Officer with the rank of Lieutenant Commander (“First IO”) on November 13 and 16, 2009, for the required Investigating Officer’s Hearing (“First IO Hearing”). Petitioner was not represented by counsel, and no witnesses were called.⁵ (MI 54-58.)

62. As part of the First IO Hearing, at the First IO’s request, Petitioner submitted a list of examples to demonstrate the sincerity of his beliefs. Petitioner on his own initiative submitted a bibliography to demonstrate the breadth and depth of his reading on religious and military topics. (MI 87-90.)

63. During the hearing, the First IO imposed faith tests on Petitioner that were in violation of the Constitution, law and applicable regulation.

64. The First IO used a Roman Catholic catechism to question Petitioner about his religious beliefs, although Petitioner was and is not a Catholic. (MI 55.)

65. The First IO questioned Petitioner at length about the Ten Commandments, even though they have no direct bearing on Petitioner’s beliefs about participation in war in any form, and told Petitioner that his inability to name all the Ten Commandments was a huge mark against Petitioner, because being able

⁵ The First IO was required by Navy regulation to prepare a summary of the hearing but did not. Petitioner’s summary of the First IO Hearing, submitted as part of his second CO application, is submitted here at MI 54-58.

to name all the Ten Commandments was the first thing a religious person would be able to do. (MI 55-56.)

66. Petitioner responded thoughtfully to the First IO's questions about the Ten Commandments and how they related to his beliefs. He explained why, according to his beliefs, various sins are the same in that they are all a rejection of the ideal of Jesus Christ:

[T]here is a perfect ideal, and by breaking any of them, you are no longer in the ideal. In that regard, they are all equal; but, I would rather live next to a thief than a murder[er]. I explain about the Sermon on the Mount, and how anger is equivalent to murder. . . . I explain that I probably will get angry in the future, that I am a sinner, and will continue to sin despite my best efforts.

(MI 55.)

67. The First IO questioned Petitioner why he was not applying for 1-A-O status, notwithstanding that Petitioner was applying for 1-O status. Petitioner explained that he could not serve as a noncombatant because, according to his beliefs, "by wearing the uniform I am implicitly condoning the actions of the military (which I cannot do)." (MI 56.)

The First Investigating Officer Report

68. On November 17, 2009, the First IO gave Petitioner a draft report. On November 18, 2009, the First IO gave Petitioner his Report ("First IO Report"), which recommended against granting Petitioner conscientious objector status. (MI 56, 72-78.)

69. The First IO Report rejected Petitioner's beliefs regarding the meaning of the Ten Commandments, and the "levelization associated with the various sins." (MI 76-77.)

70. The First IO Report disagreed with Petitioner's beliefs regarding the Ten Commandments and for that reason in part concluded that Petitioner should not be granted conscientious objector status. (MI 75-78.)

71. According to the First IO Report, Petitioner's beliefs regarding the Ten Commandments did not convince the First IO "that eliminating the sin (killing) that is least likely to occur is beneficial. . . . ENS Izbicki's argument was not able to convince me that his separation from the Navy would reduce the possibility of his sinning in the future." (MI 76-77.)

72. The First IO Report recommended rejecting Petitioner's application in part because of the "nature of his argument to prevent sin." (MI 77.)

73. Neither the "elimination of sin" nor "reducing" the "possibility" of future sin is consistent with applicable Constitutional, legal or regulatory standards for establishing a claim of conscientious objection. (MI 75-78.)

74. The First IO Report made erroneous conclusions about Petitioner's beliefs regarding the use of military force. For example, in his Rebuttal to the First IO's Report, Petitioner acknowledged that the Navy follows just war theory, international law, and the rules of engagement, but Petitioner explained that, according to his religious beliefs, "these restrictions on the use of force are insufficient and . . . deadly force is never justified." Petitioner explained that as a junior officer on a submarine, he could not participate in the use of force in any way: "not as the officer of the deck, not as an engineer providing propulsion, not as a supply officer providing food, not in any capacity." (MI 81-82.)

75. The First IO Report was legally and factually flawed in many other respects. It concluded that Petitioner's religious study was "one-sided," when the facts in

the record show that it was not and that Petitioner had studied, prayed and consulted with religious leaders extensively to determine that he could not participate in war in any form. (MI 76, 80-81.)

76. The First IO Report concluded that Petitioner's religious study was "of short duration" when the facts in the record show that it was substantial. (MI 77, 83.)

77. The First IO Report faulted Petitioner for not making "significant mention" nor demonstration of "actual training in a current or previous church" and for not providing a "creed or official statement" from Petitioner's church. The record shows that Petitioner did receive training and support from churches and military and civilian chaplains. Applicable regulations explicitly state that CO applicants need not produce a creed or official statement. (MI 8, 77, 84, 249.)

78. The First IO Report disregarded Petitioner's extensive reading, prayer and participation in religious life as actions and a pattern of conduct in support of his beliefs. (MI 75-78.)

79. On November 24, 2009, in accordance with applicable regulation, Petitioner submitted his Rebuttal to the First IO Report. The Rebuttal included letters of support from Petitioner's mother, his father, his brother, and two Academy classmates, one who was then serving as an Ensign in the Navy and a second who was then serving with the Secret Service. (MI 80-99.)

Petitioner's Command Recommends Against Recognizing Petitioner As A Conscientious Objector

80. By memorandum dated December 18, 2009, Petitioner's Command at NPTU recommended against granting Petitioner CO status. (MI 100-101.)

81. Without any basis in fact or law, Petitioner's Command claimed that Petitioner had failed to show "actions" strong enough to demonstrate the depth and sincerity of his beliefs. In violation of law and applicable regulations, Petitioner's Command also faulted him for failing to provide a statement from a personal church leader or spiritual adviser. The Command's recommendation was not delivered to Petitioner. (MI 100-101.)

The Department Of The Navy Denies Petitioner's Application

82. By memorandum dated January 14, 2010 ("First Denial Memorandum"), the Department of the Navy, Navy Personnel Command, denied Petitioner's First CO Application. The Navy's reasons for denial, stated in their entirety, were as follows:

After careful review of your application for designation as a Conscientious Objector, it is clear your request does not meet the criteria established in reference (a) [MILPERSMAN 1900-020, the Navy conscientious objector regulation] and is therefore denied.

(MI 102.)

83. The First Denial Memorandum did not state any reasons for the denial, as required by Department of Defense regulations. The Navy did not deliver the First Denial Memorandum to Petitioner for two weeks, until January 28, 2010. The Denial Memorandum referenced material (the Command's recommendation) that had not been delivered to the Petitioner.⁶ (MI 102.)

84. The First Denial Memorandum also stated that Petitioner's conscientious objector application would effectively be kept secret from Petitioner's future Commands, by directing that neither the First Denial Memorandum nor

⁶ Petitioner, now alerted to the existence of the command recommendation, requested and received a copy of it from the point of contact listed in the First Denial Memorandum.

Petitioner's Command's recommendation against granting him conscientious objector status would "be filed into [his] official service record." (MI 102.)

85. Petitioner's future Navy Commands would thus not be advised that he had applied for conscientious objector status; or of the factual basis underlying his claim; or that his claim had been denied. Petitioner's future Navy Commands would not be advised that Petitioner had been identified by a Navy psychological screening test as unable to launch a nuclear weapon because of his religious beliefs against his participation in war in any form. (MI 102.)

86. Notwithstanding the denial of his First CO Application, Petitioner's religious beliefs did not change, and he remained opposed to his participation in war in any form.

The Navy Transfers Petitioner To The Naval Submarine School In Groton, Connecticut; Petitioner "Requests Mast" To Inform His Command Of His Conscientious Objector Beliefs

87. On or about February 4, 2010, Petitioner received new orders for assignment to the Naval Submarine School in Groton, Connecticut, effective immediately. Petitioner had just two days notice that he was to move from South Carolina to Connecticut.

88. Once stationed in Groton, Petitioner looked for a peace church that would allow him to further his religious studies and to pray with a like-minded Christian community. He began to attend the Westerly Monthly Meeting, part of the Religious Society of Friends, in Westerly, Rhode Island. (MI 9.)

89. Petitioner also began a pastoral relationship with the Rev. Dr. Bernard Wilson, a retired Navy chaplain and the Senior Minister of the Norfield Congregational Church in Weston, CT. (MI 9, 24-32.)

90. Consistent with his religious beliefs and his opposition to participation in war, Petitioner declined promotion to Lieutenant (Junior Grade). He did this so as to reduce his connection to the Navy as much as possible. Doing so gave Petitioner lower status, lower military pay and a lower civilian starting salary once he was out of the Navy. (MI 45.)

91. Petitioner knew that his conscientious objector beliefs would not allow him to comply with an order to launch a nuclear missile on a submarine. He also knew, from the First Denial Memorandum, that his new Command would not know about his conscientious objector beliefs. (MI 102.)

92. Petitioner thought it would be proper and respectful to bring his beliefs to the attention of his new Command, in order to ask for reconsideration of his conscientious objector status; to ask to be removed from submarine training; to ask that he not be required to serve on a submarine; and to ask again to be released from naval service.

93. Accordingly, on March 9, 2010, Petitioner presented a packet of papers to his commanding officer, through a process called "Request Mast." This Navy process allows any sailor to make a request to his commanding officer, without going through the formal chain of command. (MI 618-621.)

94. Petitioner's packet to Request Mast included a letter to his Commanding Officer explaining that he had previously applied for conscientious objector status and been denied; that his beliefs were unchanged; that he was still religiously opposed to his participation in war in any form; that he could not obey an order to launch a weapon; and that he could not continue with Navy service because of his religious beliefs. (MI 618-621.)

95. Petitioner's letter to his Command describes the depth of his beliefs and the harm that his continuing Navy service is causing him. He writes about "the excessive psychological stress" he feels as a conscientious objector who must continue to serve as a naval officer. He writes about feeling "profoundly isolated" in the Navy because his beliefs "are the central part of [his] life and [he is] unable to speak with [his] fellow officers about this," because they would not understand; because he had been instructed not to do so; and because "talking about waging war and military tactics" (the typical topic of conversation among Naval officers) "is against [his] core beliefs." (MI 618-621.)

96. Petitioner's letter to his Command describes feeling "angry and frustrated with [his] work" and feeling "depress[ed]" and "alienat[ed] from others in the Navy." He worries that this makes him "an ineffective officer," and expresses his fear that he would "put others at risk because of [his] religious beliefs." (MI 619.)

97. With honesty and transparency, Petitioner writes about the personal challenges he confronted through the process of becoming a conscientious objector; his personal difficulty in accepting that he is, in fact, religiously opposed to participation in war in any form; his recognition that if he "could choose a different path for [himself], with different beliefs, [he] would do so;" and his acknowledgment that his decision to become a conscientious objector and "end[] [his] Navy career is "profoundly disruptive to the life [he] had envisioned for [himself]" and deeply hurtful to those [he] love[s]." (MI 621.)

98. Petitioner supported his packet to Request Mast with substantial new and different evidence demonstrating the depth and sincerity of his conscientious objector beliefs. This included a letter of support from retired Navy Chaplain Rev.

Dr. Bernard R. Wilson, Petitioner's memorandum rejecting promotion to Lieutenant (Junior Grade), and recent medical and psychological reports. (MI 24-32, 45-51.)

99. Petitioner met with his Command in a Request Mast proceeding. Petitioner's Commanding Officer recommended he meet with the Command chaplain, and Petitioner did so. On March 23, 2010, Petitioner was directed by his Commanding Officer to submit a second conscientious objector application.

Petitioner Submits A Second CO Application; The Navy Conducts A Second CO Hearing; The Navy Denies Petitioner's Second Application

Petitioner's Second CO Application

100. On March 30, 2010, Petitioner turned in his second conscientious objector application ["Second CO Application"]. (MI 1-102.)

101. Petitioner's Second CO Application documented the many conscientious objector-related changes in Petitioner's life since the submission of his First CO Application. For example, Petitioner describes his active participation in the community of the Westerly Friends Meeting, where since February 2010, he has attended Sunday Meetings for Worship and has participated in Meeting activities. (MI 9-15, 33-35.)

102. Petitioner describes the Westerly Friends Meeting as giving him a "unique sense of religious community . . . which I have found nowhere else." He describes it as "the first place where I have felt free to speak openly about my beliefs, without fear of judgment or rejection." (MI 9.)

103. Petitioner describes finding the Friends' silent worship practice particularly appealing to him because of its similarity with early church practices; that "understand[ing] Jesus's life and teachings in the context of his times" is

important to him; and that “worship with Friends is one more way for [him] to deepen that spiritual connection.” (MI 9.)

104. Petitioner describes his continued commitment to reading, worship and personal prayer, consistent with the depth and sincerity of his religious beliefs in opposition to participation in war. (MI 10-12.)

105. For example, Petitioner’s prayers now focus on peacemaking and on removing the causes of conflict. He writes: “I want every aspect of my life to contribute to peacemaking because I believe every aspect of Jesus’s did. By myself this goal is unachievable, but with prayer and God’s grace, I believe I can do it.” (MI 10.)

106. Petitioner describes reading to “sustain [his] convictions” and to “challenge [his] faith in order to make it more robust.” His spiritual reading is also guided by the recommendations of the Rev. Dr. Wilson and members of the Westerly Friends Meeting, both important sources of spiritual support for Petitioner. (MI 10-12.)

107. Petitioner describes his continued reading as “go[ing] some way to sustain and comfort [him] as [he] deal[s] with the daily conflict[] between [his] religious beliefs and [his] Naval service.” (MI 12.)

108. Petitioner also describes his second instance of psychological screening for submarine duty. Petitioner again responded that he would not be able to launch a nuclear missile. (MI 8, 14.)

109. As a result of this psychological screening test, Petitioner was referred to a Navy psychologist, who evaluated Petitioner on March 23, 2010. As a result of that evaluation, Petitioner was determined “psychologically unsuitable for

submarine duty.” The report stated: “Both the clinical interview results and the SUBSCREEN test interpretation results (30 minutes) were indicative of significant anxiety which may pose a mental health problem should he be assigned submarine duty.” (MI 14, 52.)

The Second Navy Psychologist Report

110. After submitting his Second CO Application, in accordance with applicable regulations, Petitioner was evaluated by a Navy Psychologist with the rank of Lieutenant Commander (“Second Navy Psychologist”). (MI 157-160.)

111. The Second Navy Psychologist concluded that “based on [Petitioner’s] clear ethical/moral belief system [sic] inconsistencies with uniformed service I do not recommend he be retained on active duty.” (MI 158.)

112. The Second Navy Psychologist’s Report made the following conclusions: (a) Petitioner was credible; (b) Petitioner “is sincere in his desire to attain CO status;” (c) Petitioner “has extensively compartmentalized his professional and social lives,” and Petitioner has a “practical rationale for this behavior (e.g. concern of censure by classmates);” and (d) “[T]hat based on several factors including [Petitioner’s] increased desire for CO status as well as the increased effort and time he has expended on obtaining this status, over time he will become increasingly solidified in his beliefs if not provided CO status.” (MI 159-160.)

113. The Second Navy Psychologist’s notes also recorded “some anxiety related to inconsistencies between [Petitioner’s] work role and his religious beliefs,” which he described as “an occupational problem as he has several factors interacting to create work difficulties for him.” (MI 159-160.)

114. The Second Navy Psychologist erroneously stated that Petitioner was not sufficiently exposed “experientially” to viewpoints different from his own. (MI 159-160.) Petitioner has been exposed “experientially” to viewpoints different from his own: (a) throughout his four years at the Academy; (b) through his conversations with his two close Academy friends, who disagreed with his beliefs and tried to change them; (c) through his training at NNPTC and NPTU; (d) in his several in-person, experiential conversations with the Navy chaplain while he was at NNPTC in 2009; (e) in his ongoing, in-person, experiential, religious conversations at the Northwood Baptist Church in Charleston, South Carolina, while at NNPTC, which included Bible study, singles group and counseling with pastoral leaders who had military backgrounds; and (f) in his ongoing pastoral relationship with the Rev. Joseph P. Bishop, a retired Episcopal priest and attendee at the Westerly Meeting. In, notwithstanding, holding Petitioner to an “experiential” requirement, and concluding that Petitioner did not meet it, the Second Navy Psychologist’s Report reflected unlawful bias against Petitioner.

115. Applicable law and regulation do not require a successful conscientious objector applicant to be exposed “experientially” to viewpoints different from his own.

The Second Navy Chaplain Report

116. In accordance with applicable regulations, a Navy Chaplain with the rank of Captain (“Second Navy Chaplain”) was selected by the Navy and met with Petitioner to evaluate the depth and sincerity of Petitioner’s beliefs. This was the same Chaplain with whom Petitioner had previously met, following the Request Mast proceeding. See ¶ 99, infra. (MI 161-163.)

117. The Second Navy Chaplain, through a Report dated April 30, 2010, concluded that Petitioner is “firm and fixed in his conviction against violence and his participation in war in any form as well as the bearing of arms in war.” The Second Navy Chaplain also found, inter alia, that Petitioner’s beliefs were “sincere,” “genuine,” and “deeply held.” (MI 163.)

118. The Second Navy Chaplain “sincerely believe[ed] that [Petitioner] has experienced a genuine religious transformation” and found “his beliefs credible, honest and sincere.” (MI 163.)

119. The Second Navy Chaplain found that Petitioner’s “lifestyle and pattern of conduct demonstrate[ed] active devotional, spiritual and intellectual involvement.” (MI 163.)

120. The Second Navy Chaplain’s findings, as set forth in ¶¶ 117-119 above, were legally sufficient for Petitioner to meet the prima facie requirements of 1-O Conscientious Objector status, and she should have recommended in favor of granting Petitioner 1-O Conscientious Objector status.

121. Notwithstanding the Second Navy Chaplain’s findings, as set forth above, the Navy Chaplain made other contradictory statements that were legally and/or factually erroneous.

122. The Second Navy Chaplain erroneously expected Petitioner to engage in “service to others emanating out of his faith” to substantiate his conscientious objector beliefs. “Service to others” is not a required legal or regulatory element of a conscientious objector application. (See ¶ 18, supra). The Second Navy Chaplain failed to acknowledge Petitioner’s service to others, through his church relationships and otherwise.. (MI 91-92, 163.)

123. The Second Navy Chaplain did not inquire about and therefore did not know about Petitioner's record of service to others. (MI 214.)

124. The Second Navy Chaplain erroneously supported Petitioner as a noncombatant (1-A-O) conscientious objector. (MI 163.) In so doing, the Second Navy Chaplain disregarded Petitioner's consistent statements that noncombatant Navy service was inconsistent with his religious beliefs, and disregarded applicable regulations. Applicable regulations provide that the applicant, not the Navy, decides whether he or she is a 1-O or 1-A-O conscientious objector, and prohibit offering a 1-O conscientious objector applicant 1-A-O status as a "compromise." See footnote 4, supra.

125. Petitioner told the Second Navy Chaplain that he was interested in noncombatant service only while his conscientious objector application was pending consideration. (MI 254-255.)

126. The Second Navy Chaplain erroneously characterized the duration of Petitioner's conscientious objector beliefs as "relatively recent" when in fact Petitioner had crystallized his conscientious objector beliefs in June 2009, with a substantial period of prayer, study, reflection, and clergy guidance preceding that period. (MI 161-163.)

The Second Investigating Officer Hearing

127. In accordance with applicable regulations, the Navy appointed an Investigating Officer with the rank of Lieutenant Commander ("Second IO") for Petitioner's Second CO Application. On May 11-12, 2010, the Second IO conducted the required Investigating Officer's Hearing ("Second IO Hearing") at

the United States Navy Submarine Base at Groton, CT. Petitioner was represented by counsel. (MI 103-114, 431-617.)

128. Petitioner called four witnesses, all of whom confirmed the depth and sincerity of his conscientious objection to participation in war in any form, based on his religious beliefs. Petitioner also submitted a number of supporting statements and documents in support of his application. During the hearing, the Second IO called no witnesses.

129. Before the Second IO hearing, the Second IO conducted a telephonic interview of Jesus Arroyo-Piazza, who had submitted letters in support of Petitioner, but the Second IO failed to inform Petitioner or his counsel of this interview, and failed to document the interview for the record of investigation. (MI 257, 275-276.)

130. After the Second IO hearing, the Second IO conducted telephonic interviews and email inquiries of the Second Navy Chaplain, with the First Investigating Officer, and Petitioner's Navy Supervisor, but failed to inform Petitioner or his counsel of these interviews. (MI 237, 239-240.)

131. The Second IO refused to take the testimony of one of Petitioner's witnesses (Rev. Bishop), who was not available on the day of the Second IO Hearing, although during and after the hearing, the Second IO had said and confirmed by email that he meet with the witness to hear his testimony at a later date. Rev. Bishop instead submitted a letter in support of Petitioner's application. (MI 241-243, 622-624.)

132. After the Second IO Hearing, Petitioner met with the Second IO, at the Second IO's request, to follow up on Second IO's questions regarding

Petitioner's tithing to religious and peace organizations, and to show him the records on his computer of his tithing contributions. Petitioner complied with the Second IO's requests and answered all the Second IO's questions. (MI 155-156.)

The Second Investigating Officer Report

133. By memorandum dated May 19, 2010, the Second IO issued his "Investigating Officer Report of Results" ("Second IO Report") recommending denial of Petitioner's Second CO Application. The Second IO Report was replete with errors of law and of fact. It demonstrated substantial religious bias against Petitioner and his witnesses. (MI 103-114.)

134. On June 1, 2010, in accordance with applicable regulation and the schedule approved by Petitioner's Command, Petitioner timely submitted extensive rebuttal to the Second IO Report. (MI 244-625.)

135. By email dated June 8, 2010, Petitioner's Command, through the Second IO, conducted additional investigation of Petitioner's Second CO application by asking Petitioner to respond in writing to four additional questions. On June 14, 2010, Petitioner submitted written responses to these questions. (MI 626-641.)

Recommended Denial By Petitioner's Command

136. On June 18, 2010, Petitioner received a memorandum dated June 16, 2010 from his Command recommending denial of his Second CO Application. Petitioner's Command claimed, without reference to any factual support, that Petitioner's "new evidence . . . does not substantially add to his original application and in some ways further weaken [sic] the sincerity and firmness of his claim." (MI 642.)

137. By memorandum dated July 14, 2010 (“Second Denial Memorandum”), the Department of the Navy, Navy Personnel Command denied Petitioner’s Second CO Application. The reasons stated, in full, were as follows:

After careful review of your second application for designation as a conscientious objector, this request must also be denied as it does not meet the exacting criteria established in [the Navy regulation].

(MI 644.)

138. As with the denial of Petitioner’s First CO Application, the Second Denial Memorandum stated that it “will not be filed into [Petitioner’s] official service record.” Unlike the First Denial Memorandum, the Second Denial Memorandum referred to “the exacting criteria established in [the Navy regulation]” (emphasis supplied). (MI 644.)

The Clergy And Theologians Supporting Petitioner’s Second Application Confirm The Depth And Sincerity Of Petitioner’s Conscientious Objection

139. Petitioner’s Second CO Application was supported by a diverse group of clergy and theologians. Based upon either their personal knowledge of Petitioner’s beliefs through sustained observation, conversation and pastoral relationships, and/or a review of Petitioner’s testimony and written statements, all agreed that Petitioner’s religious beliefs against participation in war are sincere and deeply held.

The Navy Chaplains

140. The two Navy chaplains appointed by the Navy to evaluate Petitioner’s conscientious objector status both found him sincere. The First Navy Chaplain found Petitioner sincere and recommended that Petitioner be granted 1-O conscientious objector status. (See ¶¶ 58-60, supra.) (MI 71.)

141. The Second Navy Chaplain made all the findings legally required to conclude that Petitioner should be granted 1-O conscientious objector status, determining that Petitioner is “firm and fixed in his conviction against violence and his participation in war in any form as well as the bearing of arms in war;” that she “sincerely believe[ed] that [Petitioner] has experienced a genuine religious transformation;” and that she found “his beliefs credible honest and sincere.” (MI 161-163.)

142. The Second Navy Chaplain also found Petitioner’s “lifestyle and pattern of conduct demonstrate[ed] active devotional, spiritual and intellectual involvement.” (MI 161-163.)

143. The Second Navy Chaplain’s belief that Petitioner was required to engage in service to others in order to be a conscientious objector, and had not done so, is erroneous, contrary to law and contrary to the overwhelming record evidence.

144. The Second Navy Chaplain’s belief that Petitioner was prepared to serve in a 1-A-O capacity, and that his CO beliefs were not of sufficiently long duration, is erroneous, contrary to law and contrary to the overwhelming record evidence.

The Rev. Dr. Bernard R. Wilson, CAPT, USN, CHC (Ret.)

145. The Rev. Dr. Bernard Wilson’s testimony and letter of support for Petitioner should have been given particular weight by the Navy. Dr. Wilson served for nearly 22 years as a Navy Chaplain. Before retiring in 2000 with the Navy rank of Captain, Dr. Wilson held many senior Navy positions, including Director of Religious Ministries (Northeast Region), Assistant Chaplain of the Marine Corps, and Northeast Regional Chaplain.⁷ (MI 24-32.)

⁷ Dr. Wilson’s detailed CV is included at MI 30-32.

146. Dr. Wilson's letter and testimony drew upon his extensive military experience of providing spiritual counsel to many Navy CO applicants; of providing the Chaplain's evaluative interview reports for CO applicants; and of being the designated chaplain member of Navy CO Boards. As a Navy Chaplain, Dr. Wilson rarely found a conscientious objector applicant sufficiently sincere to warrant discharge as a CO. In his 22 years on active duty, Dr. Wilson "guesstimated" that he was involved in one or two CO interviews a year as the interviewing chaplain. He recommended disapproval in all but three or four cases. When he served as the Navy CO Board Chaplain, out of about six cases, he recommended disapproval in all but one case. (MI 24-32.)

147. Yet, after reviewing Petitioner's CO application materials, and speaking with Petitioner in person and by telephone, Dr. Wilson recommended that Petitioner be granted discharge as a conscientious objector. (MI 24-32, 476-494.)

148. In his conversations with Petitioner, Dr. Wilson posed tough questions to him about just war theory, Hitler, the Holocaust and the atomic bombing of Japan.

Dr. Wilson described Petitioner's responses as follows:

. . . his understanding and belief had evolved to the point that he did not believe the U.S. justification for just wars aligned with his religious beliefs based on biblical principles. . . .

His personal examples of how he had changed his life to try to live a life more true to Christian ideals showed a level of emotional and spiritual commitment to these beliefs that changed since the time he entered the Academy, and over the time that his beliefs evolved as a Conscientious Objector. I understood that, as a naval officer, he was limited in the explicit public expressions of his beliefs he could make about war and nonviolence, but I believe that in his private life, including his spiritual life, he made significant changes during the process of crystallization and afterward to live out his religious beliefs.

(MI 28.)

149. Dr. Wilson described his evaluation of Petitioner’s process of study and prayer:

. . . His search for truth and knowledge sent him on a discovery about faith and other religions. He took the opportunity to learn about atheism.

But Michael moved beyond the academic. His conversations with me made it clear to me that as he became a Conscientious Objector, he made the leap from academic to the deeply spiritual. As he became certain of his conscientious objector beliefs, his religious practices changed. He took more time to pray, read the scriptures, faithfully attend worship (something he had not done as regularly before) and partook of the opportunities for in-depth Bible studies. His personal commitment to this was deep and profound. As I listened to and watched Michael’s words and demeanor, it became clear to me that here was a young man who understood that he was moving in a direction that was counter to any and everything he’d been taught.

(MI 28.)

150. Dr. Wilson concluded, based on his experience and expertise, that Petitioner’s religious beliefs were not “largely related to study and academic pursuit” as they were erroneously characterized by Petitioner’s Command. (See ¶ 270, infra.) Dr. Wilson approvingly observed that Petitioner “showed a commitment to raising the right questions” to challenge his beliefs, which showed that he “took seriously” his Naval Academy training:

I was especially impressed with Michael’s commitment to raising the right questions to understand why he believed what he believes. I was also deeply impressed with his willingness to go deeper than the simple answers all too often proffered. I believe that Michael took seriously the Naval Academy instruction to its students that an officer should explore a question to the limits of his or her ability and then say what he or she believes to be true. For Michael, the truth is that he cannot participate in any war and is a conscientious objector.

(MI 27.)

151. Dr. Wilson also made clear, in both his letter and his testimony, that while generally skeptical of conscientious objector applicants, he was particularly skeptical of applicants who had the benefits of an education from one of the service academies, such as Petitioner. He “looked a little deeper” into these applications, explaining his “cynicism about Academy graduates who accept the great and free education” and then want to claim a conscientious objector exemption. This cynicism derives from his “22 years in the Navy” and his “personal experience of Academy graduates who may also have qualms about continued military service but have nevertheless served their country loyally in combat.” For that reason, Dr. Wilson explained he was “especially not inclined to support doubtful or frivolous CO status requests from Academy graduates.” Nevertheless, Dr. Wilson stated, Petitioner met his tough standards. (MI 24-32, 481-493.)

152. In his letter, Dr. Wilson commented particularly on Petitioner’s understanding of the book Choosing Against War by John Roth, which Dr. Wilson described as a “theologically sophisticated book about pacifism as a Christian response to war.” It was “unmistakably clear” to Dr. Wilson that Petitioner grasped Roth’s premise that “all humans are flawed, that Christians are called to love their enemies and that Jesus commands Christians to turn the other cheek when struck.” Dr. Wilson observed that for Petitioner, “this was not an academic grasp, but a grasp that resulted in a personal realization of his faith.” (MI 27.)

153. Dr. Wilson’s conclusion in his letter with regard to Petitioner was unequivocal: “Based on my own military and theological experience, I recommend that the Navy recognize [Petitioner] as a conscientious objector. I

believe that forcing [Petitioner] to continue to serve under these circumstances is detrimental both to him and to the U.S. Navy.”⁸ (MI 29.)

Rev. Joseph P. Bishop

154. Rev. Joseph P. Bishop submitted a letter in support of Petitioner. Rev. Bishop received a Masters in Theology in 1942 from McCormick Seminary in Chicago, IL, and was ordained as a Presbyterian minister in that year. From 1942 to 1946, he served as a Navy Chaplain in several locations, including the Great Lakes Training Station, the Quonset Naval Station, the Charlestown Naval Air Station, a transport carrier, and a carrier vessel escort. Rev. Bishop was in the battle of Okinawa. As a Navy Chaplain, Rev. Bishop was responsible for the spiritual support of military men. He was called upon to evaluate requests from sailors to go home and to identify the malingerers making those requests. His training and education as a minister “aided [him] in making these judgments.” (MI 241-243.)

155. Rev. Bishop’s letter describes a long ministerial career, with particular pastoral expertise in judging character, helping people with problems, and wrestling with moral issues. He continues an active Christian faith life, although at the age of 92, he no longer actively serves as a minister. He participates in Eucharistic services and became an Episcopal priest because of the growing

⁸ When Petitioner was first transferred to Connecticut, he was deeply appreciative of spiritual counsel and support from Rev. Dr. Bernard Wilson until he found himself a spiritual home. Petitioner now draws spiritual counsel and support from Rev. Bishop. He maintains regular in-person contact with Rev. Bishop. Petitioner also drew counsel and spiritual support from Father Emmett Jarrett, a founder, leader and member of St. Francis House, until Fr. Jarrett’s death on October 9, 2010. See ¶¶ 164-168, infra. Petitioner has lived at St. Francis House since May 1, 2010, and is a member of the St. Francis House community. Id. ¶ 282, infra.

importance to him of the Eucharist in his faith life. He also attends the Westerly Friends Meeting. (MI 241-243.)

156. Rev. Bishop first met Petitioner in February 2010 at the Westerly Friends Meeting. He described Petitioner as “a regular participant” in the Meeting, who “sits with his head bowed in silent worship every Sunday.” He described Petitioner’s service to him: “He has regularly driven me home;” “He has helped me run errands.” Because of his age, Rev. Bishop cannot do these things for himself. As of May 16, 2010 (the date of his supporting letter), Rev. Bishop estimated that he and Petitioner had “about ten or a dozen conversations about life, faith, our military experience and other topics.” (MI 241-243.) The conversations continue to date.

157. Drawing upon his extensive professional experience as a member of the clergy, in the military and as a civilian, Rev. Bishop wrote about Petitioner:

I have come to know this officer well. He is a quiet-spoken, honorable, serious-minded guy. I think he is without guile. Regarding his conscientious objector beliefs, I believe that this position fits his disposition. . . . Mike is no wild-eyed religious enthusiast. He does not take this step easily. Nor is he without genuine appreciation for all that Navy training and education has given him. In the last year and a half or so, he has been more and more captured by the Sermon on the Mount (Mathew 5, 6, 7) the essence of which is non-violence. The lives of Martin Luther King and Gandhi have illustrated his ideal.

(MI 243.)

The Westerly Friends Meeting

158. The Westerly Friends Meeting presented written and testimonial support for the depth and sincerity of Petitioner’s conscientious objector beliefs. (MI 33-35, 431-475.) Petitioner has been a regular attender at the Meeting since soon after the Navy reassigned him to Groton, Connecticut.

159. By letter dated March 28, 2010, signed by the Meeting's Clerk (presiding officer) and members of its Ministry and Council Committee (responsible for oversight of the Meeting's religious life), the Westerly Meeting members described their decision to support Petitioner's Second Application through their own careful process of consideration and discernment:

As a religious community guided by the knowledge that there is that of God in everyone, and as it is our task to speak to that light to resolve our differences and through mutual understanding to act to remove the causes of war, we believe Michael's beliefs in opposition to war are genuine, sincere, and deeply held. We base this conclusion on our familiarity with conscientious objection to all wars and the long experience gained through practice of Friends Peace testimony in our lives. We also base our conclusions on the conversations we have had with Michael about the development of his beliefs and the deep and sometimes painful conflict he feels between his deeply held personal conviction that all wars are morally wrong and his continued military service.

(MI 33-35.)

160. Jane Johnson, clerk of the Westerly Meeting, testified in person at the Second IO Hearing. Jane Johnson's testimony supplied the Record with substantial additional evidence of the depth and sincerity of Petitioner's conscientious objector beliefs, including the following: (a) Petitioner's regular attendance at the Westerly Sunday Meeting for Worship, as compared to others of his age; (b) Petitioner's attendance and participation in the New England Quarterly Meeting, which included a lengthy silent worship; (c) her sense of Petitioner's Christian faith and its basis for his opposition to participation in war; (d) Petitioner's status as an "attender" at the Meeting, and why his choice not to seek formal membership in the Meeting adds to, rather than detracts from, the Meeting's view of his sincerity; (e) the detailed and thoughtful process by which

the Meeting evaluated Petitioner's sincerity before deciding to support his conscientious objector application; and (f) Jane Johnson's educational and professional qualifications to evaluate people and character. (MI 431-460.)

161. Jane Johnson testified that she came to know Petitioner and his faith and beliefs more personally than only through his attendance at the Meeting and his participation in its activities, because Petitioner lived with her and her husband, Kit Johnson, for some weeks before he moved to St. Francis House in May 2010. (MI 448-50.)

162. Kit Johnson, husband of Jane Johnson and also a member of the Westerly Friends Meeting, testified in person at the Second IO Hearing. His testimony supplied the record with substantial additional evidence of the depth and sincerity of Petitioner's beliefs, including, of particular note, the detailed Quaker process used to assess sincerity: "Friends do not put a lot of stock in outward indications of religious sincerity." Instead, assessing sincerity is a religious process for Friends; to "allow [] us to look into the hearts of each other and to observe whether that inner light is truly what is guiding a person." (MI 460-475, esp. 472.)

163. Kit Johnson testified that in his view, Petitioner's religious beliefs against participation in war were sincere and deeply held. (MI 468-469.)

Father Emmett Jarrett, T.S.S.F., And St. Francis House

164. Beginning in early May 2010, and continuing to present, Petitioner has lived at St. Francis House, an intentional Christian pacifist community in New London, Connecticut. St. Francis House was founded by the late Father Emmett Jarrett, and his wife, Anne Pray Scheibner. Father Jarrett was an ordained Episcopal

Franciscan priest and a Third Order Franciscan.⁹ He submitted a letter in support of Petitioner's Rebuttal to the Second IO's Report. (MI 340-341.)

165. Father Jarrett served for three years in the United States Army, and thereafter he trained at the General Theological Seminary in New York City (M. Div., cum laude, 1965). After twenty-five years of diverse pastoral ministry, he and his family moved to New London to establish St. Francis House. The work of the House is to be "a place of prayer, a house of hospitality, and a center for peace and justice ministry." Father Jarrett described St. Francis House as "'a community of discernment' about people's commitment and faith." (MI 340-341.)

166. Father Jarrett described Petitioner as "fitting in" and "participating fully" with the St. Francis community "in gratifying ways," specifying his help with meal preparation, clean up, house cleaning, preparation for public events, weekly meetings for Bible study, and bi-weekly meetings for clarification of thought. (MI 340-341.)

167. Father Jarrett was "impressed" with Petitioner's "faith commitment to nonviolence and peace" and "with the seriousness of his bible study and the depth of his faith." He noted with particular approval Petitioner's "thorough understanding of the nonviolence of Jesus and the early Christian communities." (MI 340-341.)

168. For Father Jarrett, Petitioner's "profoundly Christian conviction and his sincerity cannot be in doubt." (MI 341.)

⁹ Franciscans are Christian clergy and laymen dedicated to following the teachings of St. Francis of Assisi. They strive for simplicity, respect for nature, and peace. First and Second Order Franciscans live monastic lives, but Third Order, Society of St. Francis (T.S.S.F.), members are integrated into the wider Christian community.

Prof. Shannon Craigo-Snell, Ph. D and Rev. Kristen J. Leslie, Ph. D

169. Petitioner's Rebuttal to the Second IO Report see ¶ 134, supra, included a letter from the academic theologians Prof. Shannon Craigo-Snell, Ph. D., and the Rev. Kristen J. Leslie, Ph. D., who were both then faculty at The Divinity School of Yale University ("the Snell-Leslie Letter"). The professors reviewed Petitioner's Second CO Application, and also reviewed the testimonies of Petitioner, the Rev. Dr. Bernard Wilson, Kit Johnson, Jane Johnson, the Second IO's summaries of those testimonies, the Second IO Report, and the applicable Navy regulation. (MI 319-337.)

170. The Snell-Leslie Letter concluded that Petitioner's religious beliefs were sincere, "coherent," and "consistent," and they noted the "depth of his responses" in connection with his "prayerful understanding of . . . Christian understanding of nonviolence." They said that he "presents a faith that is mature, sincere, and integrated" and "articulates a Christian faith comparable in clarity, depth, development and sincerity with a second-year Master student at Yale Divinity School who is preparing for ordination in a Christian denomination." They were well qualified to make this determination, as "scholars of Christianity who teach students preparing for Christian ministry." (MI 323, 319 n.1)

Other Evidence In The Record Supports The Depth And Sincerity Of Petitioner's Conscientious Objector Beliefs

171. Petitioner submitted substantial additional evidence in support of his Second CO Application, demonstrating that his beliefs against participation in war in any form, including in a noncombatant status, were sincere and deeply held.

172.

Testimony And Letters From Petitioner's Family

173. Petitioner's father, John Izbicki, submitted a letter in support of Petitioner's Rebuttal to the First IO's Report (MI 93-95), submitted another letter in support of the Second CO Application (MI 36-40), and testified at the Second IO Hearing (MI 495-529). His testimony included the following subjects, demonstrative of the depth and sincerity of Petitioner's CO beliefs: (a) Petitioner's early commitment to the Navy and his Navy career, demonstrated by his selecting the Naval Academy even though he was offered scholarships at many other prestigious colleges; (b) Petitioner's pride in the Navy and his service until he realized there was a conflict between his military service and religious beliefs; (c) Mr. and Mrs. Izbicki's numerous discussions with Petitioner, in person and by telephone (and their trips to visit him from their home in California) to go over with Petitioner the serious consequences of his conscientious objector choice; (d) their conversations about his risk of imprisonment, and Petitioner's readiness to accept that risk; (e) Petitioner's emotional state, as he was preparing for, and going through, the First CO Application process; (f) their many discussions with Petitioner about considering non combatant service, and Petitioner's conclusion, after these discussions, that non combatant service was not consistent with his religious beliefs; (g) changes he observed in Petitioner's physical and emotional health during the First CO Application process, including weight loss, emotional reticence, and eczema.

174. The Second IO Report described Mr. Izbicki's testimony approvingly, stating that he found him "very credible;" that his statements at the hearing "seemed genuine;" and that "he believes his son . . . is telling the truth." (MI 112.)

175. Petitioner's mother, Mrs. Rebecca Izbicki, submitted letters in support of Petitioner's rebuttal to First IO Report (MI 91-92) and the Second IO Report (MI 338-339.) Her letters addressed the following subjects, demonstrative of the depth and sincerity of Petitioner's religious beliefs in opposition to participation in war in any form: (a) the changes in Petitioner's demeanor and behavior, starting in February 2009, after he was transferred to Charleston, had taken the psychological screening test with the question about launching a nuclear weapon, and had been referred to the psychologist and the Navy chaplain; (b) her surprise at hearing about Petitioner's change in beliefs, because Petitioner had not previously shown any indication of religious opposition to participation in war; (c) her visit and conversations with Petitioner about his beliefs, immediately thereafter, including about alternative service, and their discussions in the ensuing months about whether he could continue serving in a noncombatant role; (d) Petitioner's thoughtful consideration of whether he was a conscientious objector; (e) Petitioner's discussion about his religious beliefs about participation in war with his religious leaders and with his two closest friends from the Academy; (f) her own meeting with one of the Bible leaders from Petitioner's church in South Carolina; (g) Petitioner's diminished pride in his Navy accomplishment, noticeable at his graduation from NNPTC, notwithstanding his achievement of the rank of 3rd Officer; (h) Petitioner's interest in serving the United States by working as a civilian on nuclear disarmament; (i) Petitioner's life in high school and the Academy, including the consistency of his commitment of service to others; and (j) her observations about Petitioner's community, sense of

belonging, and participation in the Westerly Friends Meeting, when she attended once with Petitioner.

176. Mrs. Izbicki concluded that Petitioner “is sincere and lives his beliefs.” She knows that Petitioner “would like to serve his country but his service needs to be consistent with those beliefs.” (MI 338-339.)

177. Petitioner’s Second CO Application included a supporting letter from his brother, Jeff Perry, which had been prepared in support of Petitioner’s rebuttal to the First IO’s Report. When told by Petitioner about his conscientious objector beliefs, Mr. Perry was surprised, but after discussion with Petitioner, he found that Petitioner “had given much thought and careful consideration” to his beliefs. Mr. Perry “was impressed by the depth to which he took the examination of his beliefs.” To Mr. Perry, it was clear “that he had not taken this decision lightly,” and “there [was] no doubt in [his] mind” that Petitioner “will be unable and unwilling to participate in killing under any circumstances.” (MI 96.)

178. Mr. Perry acknowledged that Petitioner, who “was on his way to a distinguished Navy career,” was “willing to give up so much” for his beliefs. To Mr. Perry, that “only further validate[d] the strength of his convictions.” He noted that for some, “it might be easier . . . to quietly endure and sacrifice one’s ethical principles,” but he was “inspired by the courage [Petitioner] has shown throughout this process.” (MI 96.)

179. While acknowledging admiration for Petitioner’s courage, Mr. Perry also was honest in his “hope[] that [Petitioner] would ultimately reconcile his beliefs and decide against objecting to service.” Nevertheless, Mr. Perry could not “help but conclude that his intentions [were] honest and genuine.” (MI 96.)

Supporting Letters From Petitioner's Academy Classmates

180. Paul Cronk was at the time of his letter in support of Petitioner (November 23, 2009) an Ensign in the Navy. He was in Petitioner's class and company at the Academy. During their senior year at the Academy, they attended many of the same church services and had a number of religious and ethical discussions. After graduation, both were accepted into the Navy submarine community. (MI 97.)

181. Then-Ensign Cronk's letter describes the "number of debates" he and Petitioner had on the issue of his religious beliefs on participation in war, once Petitioner joined him in Charleston at the Nuclear Power School. He confirms that Petitioner "consult[ed] a number of pastors and chaplains for their opinion." He describes discussing "the validity of war from a number of different angles, including Christ's comments, the letters of the Apostle Paul, the teachings of early Church leaders, Mill's Utility, Kant's moral imperative, the differences between military and police forces, and the legitimacy of self defense. We discussed these implications on military violence from both hypothetical and historical frames of reference." (MI 97.)

182. Then-Ensign Cronk did "not agree" with Petitioner's conclusions about war, but he nevertheless supported Petitioner's application: "[T]he choice in favor of conscience can be a hard one, but Mike is upright and is following his convictions. I hope I would have the moral fortitude to do the same." (MI 97.)

183. Jesus G. Arroyo-Piazza attended the Academy with Petitioner, and was his roommate for their junior and senior years. After graduation, Mr. Arroyo-Piazza was commissioned as a Student Naval Flight Officer, and was thereafter

honorably discharged from the Navy during a downsizing. He then worked for the United States Department of Homeland Security. (MI 98.)

184. In his first letter in support of Petitioner, dated November 22, 2009, submitted in rebuttal to the First IO Report, Mr. Arroyo-Piazza describes his “in-depth conversations” with Petitioner and Mr. Cronk during their Academy years, regarding their “ethical, moral and religious beliefs.” These conversations “were specifically about how we expected to carry out our respective jobs in the service upon graduation, as well as the impacts that our missions would have on us as human beings.” Mr. Arroyo-Piazza is clear that Petitioner did not express conscientious objector beliefs in those conversations. “He was not against justified war or necessary killing.” (MI 98-99.)

185. When Mr. Arroyo-Piazza visited Petitioner in Charleston, South Carolina, along with Ensign Cronk, “this was the first time [Petitioner] told me that he could under absolutely no circumstances justify, participate or condone killing another human being.” Mr. Arroyo-Piazza describes a weekend “full of conversations in which [he] made futile attempts to explain to him” the necessity of war and violence under some circumstances. “Though he agreed with some of my points, he never once conceded or accepted war or killing as a justified means to solve anything: regardless of cost.” (MI 99.)

186. Mr. Arroyo-Piazza concluded that, although he “strongly disagree[d] with Petitioner’s views, he “honestly believe[d] his convictions to be truly sincere, solid and unshakeable.” Mr. Arroyo-Piazza confirmed Petitioner’s “honesty” and “moral compass.” He concluded:

I can safely, honestly and sincerely state that I know that [Petitioner] believes in his heart that waging war against mankind

is a crime in the eyes of God. I know with a high degree of certainty, that [Petitioner] is not attempting to get out of a contract with his country for reasons other than being a Conscientious Objector; nor is he attempting to flee from duty. [Petitioner] is one of the most noble people that I know and I believe that he is capable of better serving the United States of America and the rest of the world in a profession which does not condone war or violence.

(MI 99.)

187. Mr. Arroyo-Piazza submitted a second letter, dated March 24, 2010, in support of Petitioner's second conscientious objector application. At that time, he was employed by the United States Secret Service Uniformed Division. (MI 41-42.)

188. Mr. Arroyo-Piazza described his conversations with Petitioner regarding the role of violence in law enforcement. Before he became a conscientious objector, Petitioner was not opposed to "the idea of violence in the name of the law." (MI 41-42.)

189. Mr. Arroyo-Piazza commented on the significant changes in Petitioner since he became a conscientious objector, so much so that he, "as a former Naval Officer and current law enforcement officer, would not want to work with him in any capacity where I would be required to trust that he would commit an act of violence to save another life." Nevertheless, Mr. Arroyo-Piazza "trust[ed] [Petitioner]" and "his morals." He confirmed: "I know that he is not capable of taking a life to save another." (MI 41-42.)

190. The Second IO interviewed Mr. Arroyo-Piazza by telephone, but, in violation of applicable regulation, did not do so in Petitioner's presence, or in the presence of his counsel. (MI 257.)

191. In his interview with Mr. Arroyo-Piazza, the Second IO tried to solicit information that would be negative to Petitioner, but Mr. Arroyo's truthful responses were in support of granting Petitioner's CO status. (MI 257.)

192. According to Mr. Arroyo-Piazza's subsequent account to Petitioner, the Second IO's telephone conversation with him lasted approximately twenty minutes and addressed the following topics: how long he and Petitioner had known each other; why he was surprised about Petitioner's beliefs about law enforcement and when that subject was first discussed; Petitioner's views about the morality of killing and war while at the Academy; Petitioner's religious practice while at the Academy; Petitioner's involvement with religious groups after graduation; how much he and Petitioner saw each other during senior year, and after graduation; whether Petitioner had any girlfriends; why he did not pick up on Petitioner being a conscientious objector; his statement that Petitioner was not a conscientious objector at the Academy; and his conversations with Petitioner about his beliefs, and whether they were really for the purpose of trying to change Petitioner's beliefs. (MI 257, 275-276.)

193. The Second IO omitted this information from the Second IO Report , although it was favorable to Petitioner and contradicted the Second IO's recommendation. (MI 103.)

194. In violation of applicable regulation, the Second IO included no record of his interview with Mr. Arroyo in the Second IO Report. (MI 103.)

**The Department Of The Navy Unlawfully Denied Petitioner's CO Applications:
Both Of Petitioner's CO Processes Were Infected With Unlawful Religious Bias**

195. The First IO showed religious bias against Petitioner, and the Navy denied Petitioner's First CO application, based on a record containing substantial religious bias. See ¶¶ 63-78, supra.

196. The Second IO showed religious bias against Petitioner, and the Navy denied Petitioner's Second CO application, based on a record containing substantial religious bias.

Religious Bias By The Second IO During The Hearing

197. The Second IO erroneously and unlawfully claimed Petitioner's Christian conscientious objector beliefs were insincere because they were inconsistent with his own Christian beliefs. The Second IO repeatedly disparaged or rejected Petitioner's religious beliefs and those of his witnesses in favor of his own religious beliefs and/or what he believed to be "mainstream" Christian beliefs. In so doing, the Second IO showed religious bias against Petitioner. (MI 103-114.)

198. The Second IO: (a) rejected Quakerism as a Christian faith; (b) insisted on the single event of "being saved" as the only noteworthy event on a path to salvation; and (c) believed in Biblical inerrancy and literalism, all of which are not consistent with Petitioner's faith and beliefs, and the faith and beliefs of Petitioner's supporting witnesses. In so doing, and in applying his own religious beliefs to Petitioner, the Second IO showed religious bias against Petitioner. (MI 103-114, 318-337.)

199. With regard to Quaker belief, the Second IO solicited information from the Westerly Meeting in advance of the Second IO Hearing, asking for "the other beliefs of your Meeting," and also, their beliefs about the Bible. He asked: "if you

believe in the Bible, please describe your Meeting's beliefs regarding the reference to war in Ecclesiastes 3:8.”¹⁰ The Westerly Meeting responded thoughtfully:

The Ecclesiastes quote is Old Testament, and the New Testament ideas of love, peace, and forgiveness supersede the old testament doctrines of hate and war, an eye for an eye, and so forth. Furthermore, the passage from Ecclesiastes is beautiful poetry, and it does speak to the condition of world as it is and as it has been--but not as it ought to be or will be in the future. Beyond the new and the old testaments, Friends experience the continuing revelation of God's truth, and the understanding of George Fox's teaching against all wars, in which he said he had “come into the covenant of peace which was before wars and strifes were” and further, that he had discovered what it meant to live “in the virtue of that life and power that took away the occasion for all wars.” Of course, it is not that all of us live in this way, but some must if others are to change. By God's grace Friends strive to follow in his footsteps.

(MI 168.)

200. The Second IO relied upon particular “faith test” questions for Petitioner and his witnesses, rather than on appropriate questions to enable him to assess Petitioner's deep sincerity as a conscientious objector. In advance of the hearing, in addition to the Ecclesiastes question, the Second IO informed Petitioner that he intended to ask certain questions of Jane and Kit Johnson, Petitioner's witnesses representing the Westerly Quaker Meeting. (MI 676.) The Second IO did in fact ask these questions:

[1] I've heard that Quakers believe in an Inner Light, a part of God's spirit that dwells in every human. Does that contradict the popular Christian belief that we are all born sinners? Why or why not?

¹⁰ This verse reads: “A time to love and a time to hate; A time for war and a time for peace.”

[2] What do you believe happens to people after their death on Earth?

[3] Do you believe Jesus Christ is the son of God, and is God, and is the authority over all Heavens and Earth? If not, what do you believe regarding the authority of Jesus Christ?

(MI 432-435, 460-461.)

201. The Second IO also asked questions 2 and 3 of Petitioner, Dr. Wilson, and of Petitioner's father. Each witness responded differently, and the Second IO disagreed with parts of each witness's response. (MI 476, 489-490, 523-524.) The extent to which a witness's beliefs agreed with the Second IO's beliefs improperly became a test of Petitioner's sincerity.

202. The Second IO reacted to the witnesses' responses to his faith-test questions in the context of his own beliefs. For example, (a) he asked Jane Johnson whether she meant "on earth someone could actually be equal with Christ?"; (b) in response to the Westerly Meeting's written submission that "the New Testament is about love and peace and the old testament is about hate and war," the Second IO said that he "personally" believed that God in the Old Testament brought "the flood that covered the earth," and "rain and hail and brimstone on Sodom and Gomorrah;" (c) he cited the Old Testament story of God telling Gideon to destroy the Midianites,¹¹ arguing with Jane Johnson whether the Midianites' account was about war or hate or punishment, and stating his belief that, just as a parent disciplines his child for wrongdoing, God was disciplining his people through war; and (d) he asked Jane Johnson whether she believed the

¹¹ The Second IO erroneously referred to them as Mennonites. The Mennonites, like the Quakers, are an historic peace church.

story of Gideon and the Midianites; she said she did not know. (MI 436-438.) The Second IO reacted similarly in his questions of Kit Johnson. In so doing, the Second IO showed religious bias against Petitioner's religious beliefs, and the religious beliefs of his witnesses.

203. The Second IO rejected Dr. Wilson's personal religious beliefs, and Dr. Wilson's endorsement of Petitioner's attendance of the Westerly Friends Meeting. In so doing, the Second IO showed religious bias against Petitioner and his witness.

204. Responding to the Second IO's specific questions about death and salvation, Dr. Wilson testified that believing in Jesus Christ was "a way," but not "the only way" to attain what Dr. Wilson understood to be God's "special place." In response, the Second IO first referred to a suicide cult¹² and their mass suicide, asking Dr. Wilson whether he thought "that was a way they could go to God's special place?" Then, the Second IO referred to the Johnsons and their testimony: "They didn't believe that Jesus is God. Therefore, they don't even believe there is a special place. Based on that information, do you feel it was wise to send a Christian [i.e., Petitioner] to them?" (MI 489-490.)

205. The Second IO questioned Petitioner's father, John Izbicki, about his own religious beliefs and his views about his son's religious beliefs. The Second IO expressed surprise about Mr. Izbicki's religious upbringing ("You were raised Catholic?") and questioned him closely about whether he believed he would go to

¹² Although the Second IO questioned Petitioner during the hearing about the Jim Jones cult (MI 523-524), his description during Dr. Wilson's testimony appeared to be a reference to the Heaven's Gate mass suicide of 1997, in which the adherents committed suicide in connection with their beliefs about the orbit of the Hale Bopp comet near the Earth. (MI 168.)

heaven because of “good works” or because of “acceptance of Jesus Christ” (“So which one do you believe?”), implying that only one answer was acceptable to him and showing a biased view about salvation not relevant to Petitioner’s CO Application. After Mr. Izbicki confirmed that he believed in Christ for salvation, the Second IO responded positively, stating, “See, my questions are easy.” In so doing, the Second IO showed religious bias against Petitioner and his witness. (MI 523-524.)

206. The Second IO questioned Mr. Izbicki about Petitioner’s Quaker Meeting attendance. He asked Mr. Izbicki: “Did you know that the Quakers don’t believe that Jesus is God?” Mr. Izbicki disagreed, and said that from talking to Kit Johnson, “I would say that statement is not true. . . . [S]ome consider themselves to be Christians; others do not consider themselves to be Christians.”

Undeterred, the Second IO continued: “Would you be concerned if your son were attending a church where they were following beliefs other than in God?” Mr. Izbicki responded, “. . . I’m fairly comfortable with my son’s beliefs as a Christian . . . being a Quaker is compatible with Christianity.” In these questions about Petitioner’s Quaker Meeting attendance, and in his responses, the Second IO showed religious bias against Petitioner’s religious beliefs. (MI 528.)

Religious Bias In The Second IO Report

207. The Second IO Report concluded that Petitioner was not sincerely worshipping with the Quakers because Petitioner, a Christian whose “belief that Jesus is God is an accordance with mainstream Christian beliefs” could not also genuinely and sincerely worship with the Quakers. According to the Report, Quakers “do not believe that Jesus is God.” This statement is religiously

incorrect and not a statement of Petitioner's beliefs. The Report concludes that Petitioner "attends the meeting to establish a relationship that gives the appearance he is like the Quakers." In so concluding, the Second IO Report showed religious bias by disparaging Petitioner's religious beliefs. (MI 109-110.)

208. The Second IO Report showed religious bias by repeatedly and adversely contrasting Petitioner's beliefs to "mainstream" Christian beliefs. (MI 105.)

209. The Second IO Report faulted Petitioner for not including the Bible on a bibliography he prepared for his First IO Hearing, despite Petitioner's numerous citations and quotations to Biblical text in his applications. The bibliography was intended to identify only new reading, relevant to the development of Petitioner's CO beliefs. (MI 105.) The Second IO ignored substantial evidence documenting Petitioner's ongoing Bible reading and study as a significant element of his faith life, and showed religious bias against Petitioner and his religious beliefs.

210. The Second IO Report asserted doubt that Petitioner is a Christian because of the omission of the Bible from the bibliography ("[Petitioner] claims to be a Christian in his application . . ."). The Second IO Report refused to credit Petitioner's obviously thorough reading and knowledge of the Bible, and ongoing Bible study, evidenced by his application and his testimony, and confirmed by the clergy witnesses and the Snell-Leslie Letter. (MI 105, 319-337.) In so doing, the Second IO Report showed religious bias against Petitioner and his religious beliefs.

211. The Second IO Report faulted Petitioner because he does not believe that the Bible is inerrant. The Report criticized Petitioner's religious "logic" because Petitioner believes that the Bible is inspired by God, written by man, and could

include errors made by the persons who wrote it. In so doing, the Second IO Report showed religious bias against Petitioner and his religious beliefs. (MI 105, 319-337.)

212. The Second IO Report asserted the Second IO's own religious belief that "the military's full mission and limitations on the use of deadly force including the use of various nonviolent techniques [] are in accordance with the teachings of Jesus Christ." The Report faulted Petitioner, claiming he is "still not aware" of this even though he "testifies to follow" those teachings. In support of the Second IO's religious beliefs, the Second IO Report included a website printout, "What does the Bible Say About War?" from the Saddleback Church, written by Pastor Rick Warren. In that printout, Pastor Warren argues that Jesus Christ supports war and military service. In so doing, the Second IO Report showed religious bias against Petitioner and his religious beliefs. (MI 105, 174-176d.)

213. Petitioner listed both Pastor Warren's The Purpose Driven Life: What On Earth Am I Here For and another author's critical response entitled The Reason Driven Life: What Am I Here On Earth For in the list of books that he had read in connection with the development of his beliefs. (MI 89.) He at no time in any written or oral statements about his CO beliefs described his CO beliefs as supported by Pastor Warren, his church or his books.

214. The Second IO Report came to the erroneous conclusion that Petitioner was insincere about his worship at the Westerly Meeting. In support of that erroneous conclusion, the Second IO made the erroneous factual assertion Petitioner could have regularly attended a peace church when he was stationed in South Carolina. (MI 109.) The Second IO came to this erroneous factual

conclusion because he confused Petitioner's written statements, relied on his own internet research about the wrong church location, and wrongly assumed that Petitioner attended a particular campus of the SeaCoast church. In so doing, the Second IO Report showed religious bias against Petitioner and his religious beliefs.

215. The Second IO erroneously assumed that Petitioner attended the North Charleston campus of the SeaCoast Church. In fact Petitioner attended the Summerville campus of the SeaCoast Church. (MI 248-250.) Each campus was in a different location. The Second IO did not ask Petitioner for this basic information, which would have avoided these obvious errors.

216. Petitioner explained the Second IO's errors in his Rebuttal. While stationed in Charleston, South Carolina, Petitioner made thoughtful decisions regarding his faith and spiritual needs, based on the religious resources available to him and his Navy schedule. That included an internet search for a peace church, but Petitioner, for good reasons, concluded that, as compared to the one Sunday Charleston Quaker Meeting available, other churches, with more services and programs, would better suit his needs. In particular, he wanted a religious community that would meet his Navy scheduling needs and be a place where he could further his religious studies. (MI 248-250.)

217. In February 2010, when the Navy transferred Petitioner to Groton, CT, Petitioner again searched for a peace church. He chose the Westerly Meeting over the geographically closer New London Meeting because it had a more robust website, indicating (accurately) that it would suit Petitioner's need for a religious community where he could further his religious studies. (MI 248-250.)

218. The Second IO Report erroneously characterized Petitioner's training as "narrowly focused." The Report omitted the training Petitioner received from his attendance at the Northwood Baptist and SeaCoast churches, from the Navy Chaplain, and from the Westerly Quaker Meeting. In so doing, the Second IO showed religious bias against Petitioner and his religious beliefs, and was legally erroneous in applying the criteria "training in home and church." (MI 112.)

219. The Second IO concluded, without any basis in fact, that Petitioner gave "inconsistent responses" to his questions regarding his beliefs, because Petitioner's responses differed from his own Christian beliefs which he described as "mainstream." In so doing, the Second IO Report showed religious bias against Petitioner and his religious beliefs, and was legally erroneous in concluding that Petitioner's religious beliefs were not fixed (MI 113.)

Religious Bias By The Second IO And In His Report Are Confirmed By The Snell-Leslie Letter

220. The Snell-Leslie Letter reviewed the Second IO Report, its enclosed witness summaries, and the witness testimony, and reached the following conclusions with regard to the Second IO and the Second IO Report: (a) the Second IO had a rigid and narrow vision of what counts as Christianity; (b) the Second IO judged Petitioner's beliefs against the standard of his own view of Christianity; (c) the Second IO showed a particularly derisive view towards Quakerism, revealing his own bias, and rejecting Petitioner's participation in the Westerly Meeting as a genuine Christian practice. The Snell-Leslie Letter found these three errors throughout the Report. (MI 319-337.)

221. As an example of the Second IO's rigid and narrow view of what counts as Christianity, the Snell-Leslie Letter cited his repeated questions and comments

regarding whether Jesus is the only way to salvation. According to Professors Snell and Leslie, Petitioner's view, which articulates his faith in Jesus while acknowledging that people of other faith traditions might have faith in God without knowing Jesus, is a view held by other Christians and respected by influential Christian theologians. But the Second IO "responds by asking him about cults, implying that Petitioner's views are abnormal and dangerous." (MI 320.)

222. As an example of the Second IO's judgment of Petitioner's beliefs against the standard of his own view of Christianity, the Snell-Leslie Letter cited his rejection of Petitioner's interpretation of the Bible, and the Second IO's insistence on his own belief in Biblical inerrancy. The Snell-Leslie Letter quotes the Second IO's statement to Petitioner at the hearing: "You realize that there's danger when you start believing that some stuff in the Bible's not true, because then we might start believing that Jesus is not true. So if you don't believe the Bible is true, then how can you really know Jesus." (MI 320-321, 544.)

223. As another example of the Second IO's judgment of Petitioner's beliefs against his own view of Christianity, the Snell-Leslie Letter cited his refusal to accept a range of beliefs within traditional Christianity regarding how Jesus enacts salvation, and his criticism (and claimed confusion) regarding Petitioner's response. Professors Snell and Leslie explained that Petitioner's response, properly described as the Moral Exemplar Theory, "has been part of mainstream Christianity since the Middle Ages." (MI 321.)

224. As examples of the Second IO's derisive view of Quakerism, the Snell-Leslie Letter cited his repeated disparagement of Quakerism and Quaker

practices, through “compar[ing] Quaker practice to a game show,” likening Quaker practice to a suicide cult, and quizzing Quaker witnesses “on doctrinal matters in such a way as to contrast Quaker views with [his] own limited view of mainstream Christianity.” (MI 322.)

The Report Of Results Recommended Denial Of Petitioner’s Request For Conscientious Objector Status Based On The Erroneous Position That Petitioner Could Serve As A Noncombatant Consistent With His Religious Beliefs

225. Petitioner testified that he could not serve in the Navy under any circumstances, because wearing the Navy uniform associated him with the Navy warfighting mission; and that all Navy assignments were in support, directly or indirectly, of the Navy warfighting mission. (MI 598-599.)

226. Petitioner did not request 1-A-O noncombatant status because contributing to the readiness of the military in combat (through, e.g., medical work, dental work, and the like) was and is against his religious beliefs. (MI 215-216, 251-255.)

227. The Second IO Report erroneously and without legal basis faulted Petitioner’s faith-based decision not to apply for noncombatant conscientious objector status (1-A-O). This is not a lawful “basis in fact” for denying Petitioner conscientious objector status. 1-A-O status cannot be offered as a compromise to an applicant for 1-O status. MILPERSMAN 1900-020 ¶6b.

228. The Second IO described Petitioner as going “overboard” in his statement of beliefs with regard to noncombatant duty, and indicated his belief that if Petitioner could perform noncombatant duty, Petitioner’s “package would be better received.” (MI 598.)

229. The Second IO Report determined, erroneously and without legal or factual basis, that Petitioner’s “actions were contrary” because Petitioner pays taxes,

and “the military is funded by his tax money.” Applicable law and regulations do not require 1-O conscientious objector applicants to refuse to pay taxes in order to demonstrate sincerity of belief, and the payment of taxes is not a legitimate “basis in fact” to justify denial of conscientious objector status. (MI 106.)

230. The Second IO Report erroneously and without legal basis rejected Petitioner’s refusal of 1-A-O service because the Second IO disagreed with Petitioner’s conscientious objector belief that indirect support of the military through noncombatant service was a violation of his religious beliefs. The Second IO erroneously likened Petitioner’s “indirect support” argument to an “elementary school teacher” who might argue that he or she “contributes to warfare by teaching children that may grow up to join the military and contribute directly to warfare and thus the School Teacher contributes indirectly.” (MI 106.)

231. In reaching his erroneous conclusion, the Second IO failed to understand the difference between military service and civilian work, a difference that is material to Petitioner’s beliefs.

232. The Second IO Report erroneously concluded, without any factual basis, that Petitioner could perform noncombatant duties as a Health Care Administrator, a Radiation Health Science Specialist, in Information Technology Support, and in computer network defense. (MI 106-107.)

233. The Second IO ignored Petitioner’s testimony, Petitioner’s written submissions, Dr. Wilson’s testimony, and the testimony of Mr. Izbicki that Petitioner had considered, and ruled out, noncombatant service because it was inconsistent with Petitioner’s religious beliefs about participating in war in any form.

The Second IO Report Included Incomplete And Biased Witness Summaries

234. Applicable regulation requires the Investigating Officer to prepare “a written report summarizing the hearing.” MILPERSMAN 1900-020 ¶13a. The summaries must be impartial. MILPERSMAN 1900-020 ¶5a. The Second IO’s summary of the Second IO Hearing included incomplete and biased witness summaries.

235. The Second IO Report Summaries (MI 136-156) omitted substantial testimony from Petitioner and his witnesses, and, in particular, information favorable to the Petitioner but inconsistent with the Second IO’s adverse recommendation.¹³

Biased, Incomplete And Inaccurate Summary Of Petitioner’s Testimony¹⁴

236. On the subject of Jesus, salvation, and the Quaker belief of “the light within,” the summary describes Petitioner as being “very confused as he tried to find agreement between the two contradictory beliefs.” (MI 144.) In so doing, the Second IO imposed his religious viewpoint on Petitioner’s testimony, and his disagreement with Petitioner’s religious viewpoint, particularly as to Quakerism being a Christian faith. He did not present an unbiased, impartial summary of Petitioner’s testimony.

237. When asked by the Second IO to “[e]xplain why your beliefs cause you to object to warfare?” (MI 145.) Petitioner gives a thoughtful answer, referring to his

¹³ These are examples of the Second IO’s biased, partial and erroneous summaries. For a fuller presentation of these erroneous summaries, we respectfully direct the Court to Petitioner’s Rebuttal, and to the testimony itself. (MI 262-275, 431-617.)

¹⁴ Petitioner’s testimony is at MI 530-617, and the Second IO’s summary is at MI 144-155. The transcript of Petitioner’s and other witnesses’ testimony was transcribed by Petitioner from a digital recording of the hearing.

belief in Jesus, the Sermon on the Mount, how he understands it to apply to the enemy, and how he believes that it must apply to his life in all respects. (MI 10-11.) The Second IO renders Petitioner's response in the summary as follows: "I do not believe in striking back." (MI 145.)

238. With regard to Petitioner's beliefs about the Old Testament, the Second IO renders an inaccurate and bias-reflecting ("merely a record of history") summary. (MI 148) Petitioner did not use the word "merely" and the summary does not accurately reflect his testimony on the subject. (MI 534-535.)

239. The Second IO's biased report of Petitioner's view on the Old Testament is consistent with the Second IO's personal religious viewpoint regarding the inerrancy of the Bible. As he said to Petitioner during the hearing: "You realize there's danger when you start believing that some stuff in the Bible's not true, because then we might start believing that Jesus is not true." (MI 544.)

240. The summary made other explicit errors in its report of Petitioner's testimony. The summary states: "ENS Izbicki explained that he had thought that CO was compatible with beliefs of violence in law." (MI 151.) In fact, Petitioner's testimony was the opposite: "I developed my belief that violence in the name of the law was wrong, based on my [sic] teachings of Jesus." (MI 570.)

Biased, Incomplete And Inaccurate Presentation Of Dr. Wilson's Testimony¹⁵

241. The Second IO Report Summary omits substantial segments of Dr. Wilson's testimony, indicating that it was not relevant or applicable to the Second IO's determination. (MI 270-273.)

¹⁵ Dr. Wilson's testimony is at MI 476-494 and the Second IO's summary is at MI 140-143.

242. The Second IO presented Dr. Wilson with a hypothetical about a bank robber, asking Dr. Wilson whether, if a security guard killed a bank robber while the Investigating Officer was withdrawing money, the IO should feel responsibility for the bank robber's death.

243. The Second IO's summary reveals his bias against Petitioner and his fundamental misunderstanding (and rejection) of the legitimacy of any 1-O applicant for conscientious objector status: "My example was to point out that ENS Izbicki could be responsible indirectly for someone's death even if he is not in the military." The Second IO's summary shows further bias by describing Dr. Wilson's response, incompletely and inaccurately, as "Bernard Wilson did not offer an explanation, but stated that as a noncombatant ENS Izbicki would still feel connected to the military." (MI 141.)

244. In fact, Dr. Wilson's testimony was substantive and thorough on this point: Dr. Wilson acknowledged that it was possible for Petitioner to cause a death outside of the military. He further noted that he regularly asks conscientious objector applicants "do they understand that there's no getting out of the system. They might get out of the military, but there's no getting out of the system." He acknowledged the significant difference between service in the military and anything else: "But the military is, I think you would agree, is unique in its . . . because it is so in your face. When you're in the military, you know exactly what you're doing. You can mentally, as a civilian, not make those connections of, I'm paying my taxes and so therefore purchasing a weapons system. You can do that mentally as a civilian. You can't do that within the military." (MI 493.)

245. Dr. Wilson thus, in response to the Second IO's hypothetical, explained why a 1-O conscientious objector, like Petitioner, would find noncombatant service inconsistent with his religious beliefs.

246. The Second IO Report Summary of Dr. Wilson's testimony exposes the Second IO's personal religious viewpoint. The summary reveals the Second IO's concern with theological truths and a view that such truths exist. For example, when Dr. Wilson responded that Jesus was "a way" to God's special place, but did not state that he believed that Jesus was the "only way," the summary states that "[h]e did not clearly indicate what they other ways are," as if there were a "clear" answer to the question of spiritual or religious salvation. (MI 140, 489-490.)

*Biased, Incomplete And Inaccurate Presentation Of Jane Johnson's Testimony*¹⁶

247. The Second IO Report Summary of Jane Johnson's testimony omitted the following topics that were included in her testimony and supportive of Petitioner's conscientious objector claim: (a) the Quaker belief in truth-telling; (b) her qualifications, work experience and ability to assess people and character; (c) the Quaker significance of "the light within us" and "the gathered meeting;" (d) Petitioner's introduction to the Westerly Meeting, and her impressions of his good character and behavior; (e) the process by which the Meeting agreed to support Petitioner in his conscientious objector application; (f) the function of the Meeting's "Clearness Committee;" (g) an explanation of "attenders" and "members," and why it was quite usual to be an "attender" for a lengthy period of time; (h) Petitioner's regular habits of attendance at Meeting, as compared with

¹⁶ Jane Johnson's testimony is at MI 431-460 and the Second IO's summary is at MI 136-137.

others of his age, and his recent participation in the New England Quarterly Meeting, and its lengthy silent worship; and (i) Petitioner's Christian faith, and its basis for his opposition to war. (MI 432-460.)

248. The Second IO Report Summary also omitted important information from Jane Johnson's response to the Second IO's questions to her. This included her detailed explanations of the nature of Quaker belief, and its relationship to Christian beliefs and the Bible. In so doing, the Second IO demonstrated his religious bias against Petitioner's Quaker observance, and against Petitioner's Quaker witnesses. (MI 432-440.)

249. The summary inaccurately and incompletely summarized Jane Johnson's testimony regarding Meeting membership, supporting the Second IO Report's inaccurate and biased conclusions, stating: "The time required for the young woman to become a Quaker seemed to be 2 to 8 months." And also: "ENS Izbicki had not yet made the commitment to seek membership with the Westerly Meeting." Both statements reflect bias by the Second IO, and both statements are inconsistent with Jane Johnson's testimony. (MI 136, 445, 452-254.)

250. The Second IO Report wanted to use Jane Johnson's testimony to imply that Petitioner was not sincere because he had not applied for membership in the Meeting, as had a young woman who attended the meeting. But Jane Johnson's testimony was in fact the opposite: she "see[s] Mike being sincere partially because he's not requested membership. If he'd come to meeting, and then in two months said, 'I want to be a member,' and we had known that he was processing this CO application, I would have thought, 'Eh . . .you just want to be a member so you can look like a CO or something.' But he has not requested

membership, and I think it's because he understands the seriousness of that commitment and he's not one that's going to take it lightly. Those are the ones that we wait forever on them to decide to be a member because they have that kind of respect for what that means." (MI 453-454.)

*Biased, Incomplete And Inaccurate Presentation Of Kit Johnson's Testimony*¹⁷

251. The Second IO Report Summary of Kit Johnson's testimony omitted the following topics that were included in his testimony and supportive of Petitioner's conscientious objector claim: (a) his interactions with Petitioner when he was living at their home; (b) work experience as a choral conductor, and thus his expertise in evaluating non-verbal information; (c) his personal faith journey to becoming a Meeting member after being an attender for many years; (d) his knowledge of the peace-specific sections of Faith and Practice of the New England Yearly Meeting and the process for preparing a Faith and Practice book; (e) the use of "queries and advices" by Quakers; (f) the story of the early Quaker George Fox and his experience with nonviolence and conscientious objection in the 17th century; (g) his reasons for believing that Petitioner's religious beliefs against participation in war were sincere and deeply held, drawing on his own experience as a conscientious objector; and (h) the isolation experienced by conscientious objectors in the military. (MI 460-475.)

252. The Second IO Report erroneously summarized Kit Johnson's testimony about evaluating religious sincerity; misdescribed Kit Johnson's testimony about getting rid of a gun, by omitting his description of his Quaker-influenced decision-making process; and misleadingly abbreviated his response to a

¹⁷ Kit Johnson's testimony is at MI 460-476 and the Second IO's summary is at MI 138-139.

hypothetical about of how he would respond to a criminal who was harming his wife. In this last respect, the Second IO omitted Kit Johnson's explanation that he would first place himself in harm's way, and that he would do everything in his power to awaken the attacker's inner light. (MI 138-139, 473-474.)

253. The Second IO's omission created the impression that Kit Johnson's professed beliefs in nonviolence are not sincere because he would use force, but Kit Johnson's actual testimony is much more nuanced. He stated: "I do know this, as a final answer to your question, that no matter what mayhem a person was committing, if I had a weapon I could never shoot to kill. Never, no matter how bad it was. I'd shoot them in the foot or something, but hopefully I would never even pick up the weapon." (MI 475.)

*Biased, Incomplete And Inaccurate Presentation Of John Izbicki's Testimony*¹⁸

254. The Second IO Report Summary of John Izbicki's testimony omitted the following topics that were included in his testimony and supportive of Petitioner's conscientious objector claim: (a) Petitioner's acceptance at many colleges, with scholarship support; (b) his decision to attend the Academy to be challenged physically, academically and morally; (c) his pride in being a student at the Academy, noticeable throughout his four years; (d) learning in April 2009 that Petitioner was thinking about applying for conscientious objector status, and Mr. Izbicki's concerns for his son; (e) Mr. and Mrs. Izbicki's visits with Petitioner, and their discussions with him about his thinking and his emotional state; (f) Mr. and Mrs. Izbicki's discussions with Petitioner about the consequences of applying for conscientious objector status, including possibly imprisonment, and Mr. Izbicki's

¹⁸ John Izbicki's testimony is at MI 495-529 and the Second IO's summary is at MI 142-143.

“number one fear as his father” was that “somehow, in the process, . . . he will end up in the brig . . . ” (MI 504), and his son’s statement to him that he would rather face imprisonment than kill or participate in killing; (g) Mr. Izbicki’s “quite frequent[]” proposals to Petitioner that he consider noncombatant roles in the military, and Mr. Izbicki’s explanation that one of the reasons his son cannot serve in a noncombatant role is that a military officer is a role model for society, particularly for young children, and he did not want to influence people in that way in favor of war; (MI 504-505); (h) Mr. Izbicki’s description of how his son felt after submission of his first conscientious objector application: “Now it was in the Navy’s hand to act on it. I know that he felt confident that the Navy would look at his application and see the truth in it, that he had addressed the major issues that were required with a conscientious objector, and that he had addressed them truthfully. It was beyond his . . . since he had said something, and he said it to be true, he was sure it would be perceived as true and correct.” (MI 510-511.)

255. The Second IO Report Summary omits Mr. Izbicki’s description of Petitioner’s attendance at the Westerly Meeting. Mr. Izbicki described it as follows: “It was very much like Michael. For him it was like he belonged. It was like kind of a coming home. . . . He was quite comfortable with it. Like I say, he had a great sense of belonging I think. I felt comfortable with him.” This refutes the Second IO Report’s unsupported conclusion that Petitioner’s attendance was expedient and not genuine. (MI 518.)

256. The Second IO Report Summary omitted the Second IO’s display of disrespect and lack of knowledge of Quaker beliefs, which he displayed in his

question to John Izbicki: “Did you know that the Quakers don’t believe that Jesus is God?” To which John Izbicki responded that he believed that the statement was not true. (MI 528.)

The Department Of The Navy Unlawfully Denied Petitioner’s CO Application: The Second IO Report Contained Many Other Factual, Legal And Procedural Errors

The Second IO Report Erroneously Criticized The Recommendation Of The First Navy Chaplain

257. The Second IO Report rejected, without any basis in fact, the positive recommendation of the First Navy Chaplain.

258. The Second IO Report criticized the First Navy Chaplain’s statement that Petitioner would not bear arms because Petitioner had hunted, and owned disassembled and non-working AK-47 parts, acquired when he was an Academy student and long before he crystallized his beliefs as a conscientious objector. Neither hunting, nor the possession of antique, non-functional weapon parts constitutes the “bearing of arms” as that term is understood in the law and regulations applicable to conscientious objectors.

259. Petitioner explained in his testimony that he acquired this antique and disassembled collection of AK-47 parts while he was at the Academy and long before he became a conscientious objector; that it is not functional as a weapon because parts are missing; that the parts had not been on display, but in a box under his bed; and that the parts were now in storage. (MI 582-584.)

260. Petitioner explained to the Second IO, in response to his questions, and in response to his post-hearing written requests for additional information, that it would not be proper or consistent with his beliefs for Petitioner to give the parts

away to another who might use it as a weapon. Instead, Petitioner keeps it as a reminder of “violence out in the world.” (MI 582, 626.)

261. The Second IO disparaged Petitioner’s explanation, and offensively likened it to an FBI agent working against child pornography who would keep pictures of child pornography on the walls of his office. (MI 583.)

The Second IO Report Erroneously Concluded That Petitioner Acted “Irresponsibly” Or With “Malice” And Was Motivated To Avoid Military Service Because He Read, Studied Then Applied For Conscientious Objector Status Well After His Academy Graduation

262. The Second IO Report concluded, without any basis in fact, that Petitioner was “motivated to avoid military service” and claimed as evidence Petitioner’s research into the subject of conscientious objection “despite his mainstream Christian beliefs and his commitment to the U.S. Navy.” (MI 107.)

263. The Second IO Report speculates that Petitioner’s study was initiated “irresponsibly without regard to his military commitment” or “maliciously to learn how to evade military service through the claim of Conscientious Objector.” This is erroneous and without any factual basis. (MI 107.)

264. These statements are contradicted by other statements in the Second IO Report where the Second IO acknowledges that Petitioner “did not reveal any tangible motive for wanting to leave the Navy for reasons other than his belief.” (MI 107.)

265. Petitioner’s reading and study was balanced, and was conducted with the support and guidance of clergy, both civilian and military. Through his reading and study, Petitioner hoped to convince himself to remain in the Navy. Petitioner was counseled to consider applying for conscientious objector status by a Navy chaplain.

266. It is neither unlawful nor contrary to military regulation to apply for conscientious objector status. The application for conscientious objector status is explicitly recognized by Navy and Department of Defense regulation and by statute. The record is utterly devoid of any evidence of “irresponsibility” or “malice” by Petitioner. The Second IO’s claims to the contrary are evidence of bias.

Petitioner’s Interest In A Civilian Career To Work On Nuclear Disarmament Was Clearly Stated In His First CO Application

267. Petitioner stated in his First CO application, submitted in October 2009, that he had an interest working as a civilian on nuclear disarmament. Petitioner wanted to be able to put his training and knowledge to work for peace. (MI 166.)

268. Inexplicably, the Second IO Report erroneously concluded that Petitioner first got the idea of working as a civilian on nuclear disarmament from his meeting Rev. Joseph Bishop in February 2010. Premised on this blatant factual error, the Report concluded erroneously that because Petitioner was “willing [] to make a career decision based on someone’s comment in a church meeting . . . [he] may not be firmly fixed to the decisions he makes.” (MI 108.)

Factual Error: The Second IO Gave Improper Weight To Petitioner’s Ceremonial And Historical Swords

269. The Second IO Report gave improper weight to Petitioner’s ownership of ceremonial and historical swords. The swords are not weapons, were not acquired by Petitioner as weapons, and were acquired by him prior to the crystallization of his beliefs as a conscientious objector. (MI 255-256.)

Petitioner's Commanding Officer's Recommended Denial, And The Department Of The Navy's Denial, Lacked Any Basis In Fact And Failed To Meet Applicable Legal Standards

Recommended Denial By Commanding Officer

270. By memorandum dated June 16, 2010, Petitioner's Commanding Officer recommended denial of Petitioner's Second Application. The memorandum enclosed Petitioner's Second Application, the Report of Recommendation, and Petitioner's Rebuttal materials. (MI 642.)

271. The Commanding Officer stated four reasons in support of his recommended denial:

(a) Petitioner's new evidence "does not substantially add to his original application and in some ways further weaken the sincerity and firmness of his claim;" (b) Petitioner's "outward manifestation of his asserted evolving beliefs are largely related to study and academic pursuit;" (c) Petitioner's beliefs "lack sustained actions of service;" and (d) there is insufficient evidence to definitively link Petitioner's beliefs to his convictions, "versus a desire to avoid military service outside the academic military environment in which Ensign Izbicki has been immersed for the past six years." (MI 642.)

272. The Commanding Officer's recommendation was legally and factually erroneous.

273. The Commanding Officer's recommendation cited no evidence or basis in fact to illustrate or support his conclusion regarding Petitioner's new evidence.

274. The Commanding Officer's recommendation cited no evidence or basis in fact to illustrate or support his claim that Petitioner's beliefs were "largely related to study and academic pursuit" and did not address the substantial

uncontradicted evidence in the record, supported by clergy, theologians, and religious leaders, of Petitioner's active religious life of prayer, devotion and participation in life of his religious communities.

275. The Commanding Officer's recommendation cited no evidence or basis in fact to illustrate or support his conclusion that Petitioner lacked "sustained actions of service." Applicable law and regulation does not require beliefs to be linked to "sustained actions of service." Notwithstanding, the record demonstrates Petitioner has sustained actions of service. (MI 214.)

276. The Commanding Officer's recommendation cited no evidence or basis in fact to illustrate or support his conclusion that Petitioner was seeking to avoid military service. There was no evidence: the Second IO Report specifically stated that Petitioner "did not reveal any tangible motive for [] wanting to leave the Navy for reasons other than his belief." (MI 107.)

277. Neither law nor regulation prohibits the recognition of a conscientious objector whose opposition to participation in war in any form develops in an academic military environment (which in Petitioner's case included submarine training).

Denial By The Department of the Navy

278. By memorandum dated July 14, 2010 ("Second Denial Memorandum") the Department of Navy denied Petitioner's application, stating only that Petitioner did "not meet the exacting criteria" of the regulation. (MI 644.)

279. The Department of the Navy failed to provide its reasons for its adverse decision, as required by applicable law and regulation, and failed to give a basis in fact to support its decision.

280. The Second Denial Memorandum also stated Petitioner's conscientious objector application would effectively be kept secret from Petitioner's future Commands, by directing that neither the Denial Memorandum nor Petitioner's Command's recommendation against granting him conscientious objector status would "be filed into [his] official service record." (MI 644.)

281. Petitioner's future Navy Commands would thus not be advised that he had applied for conscientious objector status; or of the factual basis underlying his claim; or that his claim had been denied. Petitioner's future Navy Commands would not be advised that Petitioner had been identified as unable to launch a nuclear weapon because of his beliefs.

282. The Department of the Navy held Petitioner to a different standard in evaluating his Second CO application. In denying his First CO application, the Denial Memorandum referred to the "criteria of the regulation." In denying his Second CO application, the Second Denial Memorandum referred to the "exacting criteria of the regulation" (emphasis supplied). The Department of the Navy gave no explanation for this change in applicable standard, which is not supported by or stated in any applicable regulation. (MI 644.)

283. Petitioner continues to conduct himself as a conscientious objector in all possible ways, consistent with his military obligations. He writes about nuclear disarmament. He continues to live in and participate in the peace-oriented, Gospel-driven activities of St. Francis House, to the extent possible with his Navy duties. He continues to pray regularly, alone and with the members of the St. Francis House community, and he regularly attends the Westerly Meeting's Sunday Meeting for Worship.

Petitioner Is Suffering Irreparable Harm Because Of His Continued Navy Service Which Is Contrary To His Deeply Held Religious Beliefs

The Navy Could Assign Petitioner To Duty Even More Conflicting With His Beliefs At Any Time

284. When he filed his first and second CO applications, Petitioner was assigned to noncombat-related duty, pursuant to applicable law and regulation which requires that once a conscientious objector application has been filed, “to the extent practicable under the circumstances, during the period applications are being processed and until a decision is made by the headquarters of the service concerned, every effort will be made to assign applicants to duties within the Command to which they are assigned which will conflict as little as possible with their asserted beliefs.” 32 C.F.R. §75.6 (h) (2004). Applicable Navy regulations, MILPERSMAN 1900-020 ¶ 15e requires the assignment of a conscientious objector applicant to duties providing “the minimal practicable conflict with their professed beliefs.” The Navy has honored this regulation.

285. Petitioner no longer enjoys the protection of these regulations because the Navy has made a final decision to deny his conscientious objector applications.

286. Petitioner is now assigned to duty that conflicts less with his beliefs than assignment to a submarine, but it is duty that supports the Navy’s submarine service and thus the Navy’s warfighting mission. Any Navy service by him supports the Navy’s warfighting mission, and, for Petitioner, conflicts with his religious beliefs. (MI 215-216, 598-602.)

287. Because the Navy has denied Petitioner’s conscientious objector applications, it is likely that he will, in the immediate future, be re-assigned to

duty that contributes more to the Navy's warfighting mission and thus conflicts even more with his conscientious objector beliefs.

288. If ordered to engage in duties more supportive of the Navy's warfighting mission, Petitioner would have to refuse and would thereupon be subject to court martial and severe punishment. His conscientious objection to war would not be a cognizable defense in such a court martial.

289. If Petitioner is required to continue to serve in the Navy he will have to choose between obeying the Navy, and obeying the deeply held religious beliefs that guide his life; by choosing to adhere to his religious beliefs, he is likely to be subjected to trial by court martial and to punishment.

Petitioner's Acute Emotional Distress When His First CO Application Was Denied

290. As a conscientious objector, Petitioner experiences estrangement and emotional distress, on a daily basis, from his continuing Navy service, and from the Navy's rejection of his Conscientious Objector applications.

291. At the time of the denial of his First Application, before the Navy reassigned Petitioner to New London, and before Petitioner moved into St. Francis House, Petitioner's distress was extremely acute.

292. Petitioner suffered stress-related eczema rashes, lost weight, and was so stressed and upset that he punched a hole in a wall in his apartment. (MI 612-613.)

293. Petitioner's father, Mr. John Izbicki, reported in his letters in support of Petitioner's applications and in his testimony at the Second IO Hearing that Petitioner was socially isolated when he was in Charleston because he could not discuss his religious beliefs with anyone in his Command. (MI 36-40, 93-95.)

294. Petitioner's father also testified about Petitioner's deteriorating emotional condition after his First CO Application had been denied by the First IO, Mr. Izbicki described Petitioner as looking "tired," "haggard," "worn," "emotionally worn out" and "emotionally drained." (MI 514.)

295. In contrast to his usual social behavior, Petitioner showed no sign of any social life, either with his Navy colleagues or with his friends from home.

According to his mother, "[h]e had been told that he was not to discuss [his conscientious objector issues] with the officers with him, so he really had no support system." Nor was he socializing with non-Navy friends as "[h]e had completely avoided interacting with people at that point." (MI 515.)

296. In fact, Petitioner had been "strongly advised" by the Navy Chaplain counseling him and his NPTU chain of command to maintain silence about his conscientious objector beliefs with his fellow officers. (MI 12.)

297. Petitioner's emotional distress and spiritual isolation were also observed by Dr. Wilson when he arrived in Connecticut. Dr. Wilson was "concerned about his well-being. . . . [I]t's a very tough thing to do to put in a package for conscientious objector status. It can be isolating. It can be a lonely experience, and very, very stressful. I saw that in my first encounter with him. . . . [I saw] in his face, how tough this was. He then shared that with me that this was very stressful and very emotional for him. . . . I asked him if it was tougher than his plebe summer, and he said, "much tougher." (MI 477-478.)

Petitioner's Emotional Support From St. Francis House And The Westerly Meeting

298. Since March 2010, after he was reassigned to Groton, Connecticut Petitioner has acted on and supported his conscientious objector beliefs by

worshipping with the Westerly Friends Meeting in Westerly, Rhode Island. (MI 9, 33-35.)

299. Since May 2010, Petitioner has further acted on and supported his conscientious objector beliefs by taking up residence with St. Francis House, an intentional Christian peace-based community in New London, Connecticut, which has a daily prayer practice and does nonviolent service in the community consistent with Petitioner's religious beliefs. (MI 340-341.)

300. Worshipping and living with persons of like faith and belief has allowed Petitioner to reduce some of the daily and acute isolation, distress and frustration he had been experiencing as a conscientious objector still on active duty military service.

301. Mr. John Izbicki visited Petitioner in March 2010, after Petitioner had begun to worship with the Westerly Friends Meeting. He testified that Petitioner "seemed much better. He seemed more comfortable in his surroundings. He seemed more relaxed. He seemed like he had at least an opportunity to find some people who understood what he was going through . . . That was . . . at the time he was attending the Quaker church . . . at least at this point, he was not alone and these people [the Quakers] understood his position and what it meant to be a conscientious objector." (MI 517-718.)

302. Petitioner suffers great anxiety, and fears that persons with decision-making authority in the United States Navy may seek to transfer him from Groton without taking into account his religious beliefs in opposition to participation in war in any form.

303. Petitioner's anxiety is not unfounded, because he was previously ordered to submarine training duty in Groton on only two days notice, notwithstanding that he had informed the Navy that he was a conscientious objector and was unable, because of his religious beliefs, to obey an order to launch a nuclear missile. See ¶87, supra.

Petitioner Has Exhausted His Administrative Remedies And Has No Adequate Remedy At Law

304. The Department of the Navy's denials of Petitioner's conscientious objector applications, together, is a final agency decision. Petitioner has no further avenues of appeal within the Navy. Petitioner has exhausted his administrative remedies.

305. The Petitioner has no plain, adequate or complete remedy at law to redress the wrongs described herein. Petitioner has been, is being, and will be irreparably injured by the conduct of the Respondents unless the Court issues a writ of habeas corpus.

Petitioner Has Met All Of The Legal Requirements For Recognition As A 1-O Conscientious Objector

306. Petitioner has met all of the legal requirements for recognition as a 1-O conscientious objector.

307. Petitioner's First Conscientious Objector Application met all of the legal requirements for recognition as a 1-O conscientious objector, and should have been granted by the Navy.

308. Petitioner's Second Conscientious Objector Application met all of the legal requirements for recognition as a 1-O conscientious objector, and should have been granted by the Navy.

309. Petitioner has twice demonstrated that he holds religious beliefs against participation in war in any form that are honest, sincere and deeply held. Navy chaplains (active duty and retired), ordained ministers, lay religious leaders, and academic theologians confirmed the depth and sincerity of his beliefs.

MILPERSMAN 1900-020 ¶2b. Respondents have no basis in fact for any other conclusion.

310. Petitioner has twice demonstrated that his beliefs against participation in war did not exist prior to his Navy service. MILPERSMAN 1900-020 ¶3a.

Respondents have no basis in fact for any other conclusion

311. Petitioner has twice demonstrated that he is opposed to participation in all wars. MILPERSMAN 1900-020 ¶3d. Respondents have no basis in fact for any other conclusion.

312. Petitioner has twice demonstrated that he holds his beliefs with integrity, and consistency. MILPERSMAN 1900-020 ¶5b. Respondents have no basis in fact for any other conclusion.

313. Petitioner has twice demonstrated that the beliefs upon which his conscientious objection is based is the primary controlling force in his life, and that avoidance of military service is not the basis of his claim. MILPERSMAN 1900-020 ¶5c. Respondents have no basis in fact for any other conclusion.

314. Petitioner has twice demonstrated that his conduct, and the outward manifestation of his beliefs against participation in war, are fully consistent with the beliefs stated in his conscientious objector applications. MILPERSMAN 1900-020 ¶5d. Respondents have no basis in fact for any other conclusion.

315. Petitioner has twice demonstrated that his religious training in home and church supported the development of his conscientious objector beliefs.

MILPERSMAN 1900-020 ¶6a(1). Respondents have no basis in fact for any other conclusion.

316. Petitioner has twice demonstrated that his general demeanor and pattern of conduct supports his conscientious objector beliefs. MILPERSMAN 1900-020 ¶6a(2). Respondents have no basis in fact for any other conclusion.

317. Petitioner has twice demonstrated that he has participated deeply and consistently in religious activities consistent with his conscientious objector beliefs. MILPERSMAN 1900-020 ¶6a(3). Respondents have no basis in fact for any other conclusion.

318. Petitioner has twice demonstrated that he is a credible witness. MILPERSMAN 1900-020 ¶6a(5). Respondents have no basis in fact for any other conclusion.

319. Petitioner has twice demonstrated that his claim for conscientious objector status was supported by credible witnesses. MILPERSMAN 1900-020 ¶6a(6). Respondents have no basis in fact for any other conclusion.

320. Petitioner has twice demonstrated that he did not apply for conscientious objector application for some reason other than the development of his sincere and deeply held religious opposition to participation in war in any form.

MILPERSMAN 1900-020 ¶6a(6). Respondents have no basis in fact for any other conclusion.

321. Petitioner has demonstrated that his active participation in the religious pacifist communities of the Westerly Friends Meeting and of St. Francis House is

not a “mere affiliation.” MILPERSMAN 1900-020 ¶6c. Respondents have no basis in fact for any other conclusion.

322. Petitioner has twice demonstrated that his personal convictions against participation in war in any form derive from his religious beliefs. MILPERSMAN 1900-020 ¶6c. Respondents have no basis in fact for any other conclusion.

323. Petitioner has twice demonstrated that his religious opposition to participation in war in any form governs his action in both word and deed. MILPERSMAN 1900-020 ¶6c.

324. Petitioner has twice demonstrated that his conscientious objection to participation in war is not based on opposition to national policies, or about his views concerning the nation’s domestic or foreign policies. MILPERSMAN 1900-020 ¶¶6c, 10e. Respondents have no basis in fact for any other conclusion.

325. Petitioner has twice demonstrated that he is not objecting to military service on the basis of a false premise. MILPERSMAN 1900-020 ¶10e. Respondents have no basis in fact for any other conclusion.

The Navy Failed To Comply With The Procedural Requirements Of MILPERSMAN 1900-020

326. As factually described above, the Navy’s proceedings have been filled with procedural errors. These errors are specifically identified below with the relevant regulation citation.

327. The First and Second IOs did not conduct the “impartial evaluation” required by MILPERSMAN 1900-020 ¶5a, because the Investigating Officers’ own religious beliefs interfered with and negatively affected the investigation.

328. Regulations prohibit the characterization of Petitioner, a 1-O Conscientious Objector applicant, as a 1-A-O Applicant, but in both hearings, Navy officials sought to characterize Petitioner, a 1-O applicant, as a 1-A-O applicant.

329. The First and Second IO Reports did not include an accurate and complete summary of the testimony of witnesses as required by MILPERSMAN 1900-020 ¶13a. No summary was included in the First IO Report. The Second IO Report's summary of witness testimony was not impartial, in violation of DoDI 1300.06 ¶5.2.2.

330. Petitioner was not afforded an opportunity to "examine all items in the file" at the Second IO Hearing, as required by MILPERSMAN 1900-020 ¶14b.

331. The Second IO Report includes and relied upon letters, references, and enclosures that were not previously shown to Petitioner or his counsel, in violation of MILPERSMAN 1900-020 ¶14b.

332. The Second IO Report includes and relied upon interviews with several witnesses conducted outside of the presence of Petitioner or his counsel, in violation of MILPERSMAN 1900-020 ¶14b.

333. At the Second IO Hearing, Petitioner was not permitted to present one witness in person on his own behalf, Rev. Joseph P. Bishop, in violation of MILPERSMAN 1900-020 ¶14b.

334. The Second IO's interview of at least one witness is omitted from the Report of Results, which thus does not accurately and completely summarize the testimony of witnesses as required by MILPERSMAN 1900-020 ¶13a.

CLAIMS FOR RELIEF

I. Habeas Corpus: 50 U.S.C. § 456(j)

335. The Military Selective Service Act, 50 U.S.C. § 456(j), provides that no person shall “be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.”

336. Petitioner, by reason of religious training and belief, is conscientiously opposed to his participation in war in any form. He therefore should be released from military custody forthwith. Petitioner has made out a prima facie case for discharge from the Navy, and the Respondents have no legally sufficient reason or basis in fact to deny Petitioner discharge as a Conscientious Objector.

II. Navy Regulation 1900-020 and Department of Defense Instruction ¶1300.06

337. Navy Regulation 1900-020 and DoDI ¶1300.06 grant conscientious objector status to personnel who are conscientiously opposed to war in any form; whose opposition is founded on religious training and beliefs; and whose position is sincere and deeply held.

338. Petitioner has twice demonstrated that he qualifies for CO status, by establishing, by clear and convincing evidence, that he is conscientiously opposed to war in any form, based on his sincere and deeply held religious beliefs. Petitioner has twice made out a prima facie case for honorable discharge from the Navy, and the Respondent has no legally sufficient reason or basis in fact to deny Petitioner discharge as a Conscientious Objector.

III. First Amendment

339. Respondents have violated Petitioner's right to be discharged as a Conscientious Objector in violation of the First Amendment of the United States Constitution.

340. The two proceedings conducted by the Navy to examine Petitioner's conscientious objector applications violated his right to free exercise of religion protected by the First Amendment and violated the Establishment Clause of the First Amendment.

IV. Fifth Amendment

341. Respondents have violated Petitioner's right to the equal protection of the laws, by holding Petitioner to a different and more stringent legal standard than other conscientious objector applicants in violation of the Fifth Amendment of the United States Constitution.

342. Respondents unlawfully and without factual basis deemed insincere Petitioner's Christian beliefs as inconsistent with their own Christian beliefs, or Christian beliefs which they believe to be more "mainstream."

343. Respondents thus unlawfully failed to consider Petitioner's conscientious objector application based on Petitioner's own personal religious beliefs, and thus erroneously and unlawfully concluded that Petitioner's Christian beliefs were not irreconcilable with continued Navy service.

344. In so doing, Respondents denied Petitioner due process and the equal protection of the law.

V. Constitutional Due Process, And Failure to Comply With Navy Regulation MILPERSMAN 1900-020 and Department of Defense Instruction ¶1300.06

345. Navy Regulation MILPERSMAN 1900-020 requires the grant of conscientious objector status to personnel who are conscientiously opposed to war in any form; whose opposition is founded on religious training and beliefs; and whose position is sincere and deeply held.

346. Department of Defense Instruction ¶1300.06 also requires the grant of conscientious objector status to personnel who are conscientiously opposed to war in any form; whose opposition is founded on religious training and beliefs; and whose position is sincere and deeply held.

347. Petitioner has demonstrated that he qualifies for CO status. He has shown by clear and convincing evidence that he is conscientiously opposed to war in any form based on his sincere and deeply held religious beliefs. Petitioner has made out a prima facie case for honorable discharge from the Navy, and the Respondent has no legally sufficient reason or basis in fact to deny Petitioner discharge as a conscientious objector.

348. Respondents have failed to follow the requirements of MILPERSMAN 1900-020 and Department of Defense Instruction ¶1300.06 in considering Petitioner's conscientious objector applications.

349. By failing to comply with the requirements of MILPERSMAN 1900-020 and Department of Defense Instruction ¶1300.06, Respondent has repeatedly denied Petitioner constitutional due process of law.

VI. Religious Freedom Restoration Act

350. The Religious Freedom Restoration Act, 42 U.S.C. §2000bb, provides that "Government shall not substantially burden a person's exercise of religion even if

the burden results from a rule of general applicability,” except where government can demonstrate that the burden is “in furtherance of a compelling governmental interest” and the burden “is the least restrictive means of furthering that compelling governmental interest.”

351. Respondents’ refusal, twice, to recognize Petitioner as a conscientious objector has burdened Petitioner’s exercise of religion, by compelling Petitioner to continue his military service, notwithstanding that participation in war in any form is contrary to his sincere and deeply held religious beliefs.

352. Respondents have not demonstrated and cannot demonstrate that the burden on Petitioner is in furtherance of a compelling governmental interest.

353. Respondents have not demonstrated and cannot demonstrate that denying Petitioner recognition as a conscientious objector and granting him an honorable discharge from the Navy is the least restrictive means in furtherance of any compelling governmental interest.

354. Respondents are not exempt from the obligations of the Religious Freedom Restoration Act.

355. Respondents have unlawfully violated Petitioner’s rights under the Religious Freedom Restoration Act.

356. By failing to comply with the requirements of the Religious Freedom Restoration Act, Respondents have violated Petitioner’s statutory relief and unlawfully denied him an honorable discharge as a conscientious objector.

357. Petitioner is entitled to the relief he was unlawfully denied.

RELIEF REQUESTED

WHEREFORE, Petitioner requests that this Court:

- a. Issue an Order directing the Respondents to show cause before this Court why a Writ of Habeas Corpus should not be issued.
- b. Issue the Writ of Habeas Corpus, and order Petitioner's release from the Respondents' custody in the Navy with an honorable discharge as a conscientious objector.
- c. Award Petitioner reasonable attorneys' fees and costs, in accordance with the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable law.
- d. Order such other relief as this Court may deem just and proper.

ORAL ARGUMENT REQUESTED

Dated: November __, 2010
New London, CT

Respectfully submitted,

MICHAEL J. IZBICKI