PARLATORE
LAW GROUP

Timothy C. Parlatore, Esq.
Founder & Managing Partner

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Office of Inspector General
United States Department of Defense,
4800 Mark Center Drive
Alexandria, VA 22350-1500

Re: Complaint of Edward R. Gallagher

We respectfully submit this complaint on behalf of Special Warfare Operator Chief Petty Officer (SOC) Edward R. Gallagher, United States Navy. For almost two years, SOC Gallagher has suffered irreparable damage at the hands of multiple individuals and entities within the Department of Defense. We are writing to you directly, because of the breadth of the issues, individuals, and commands involved. This complaint encompasses Naval Criminal Investigative Services (NCIS), Office of the Judge Advocate General (OJAG), both the Chief of Staff and the Southwest Region Legal Services Office (COS RLSO and RLSO SW), Chief of Navy Information (CHINFO) and Naval Special Warfare Command (WARCOM) and its subordinate units. As this complaint encompasses abuse by several different DON components, as well as Intelligence Oversight, restriction and retaliation, we believe that your office is the most appropriate to handle this matter.

As you might be aware, SOC Gallagher was the defendant in a recent, highly-publicized court-martial related to his deployment to Mosul, Iraq as the Platoon Chief of Alpha Platoon, SEAL Team 7 (ST-7) from 6 February 2017 – 1 September 2017. Although he was charged with an array of offenses, including Murder and Attempted Murder, he was acquitted of those fabricated charges after a jury trial. The purpose of this complaint is not to re-litigate the case itself, but rather to seek accountability for the severe misconduct committed by the investigators, prosecutors, and the command before, during, and after the trial. Specifically, SOC Gallagher complains of the following:

1. Misconduct by NCIS personnel in the investigation and presentation of charges;
2. Misconduct by RLSO SW personnel in the suppression of evidence;
3. Misconduct by NCIS, RLSO SW, COS RLSO, and OJAG in the illegal warrantless tracking of defense counsel's emails;
4. Intelligence oversight of NCIS's practice of using counter-intelligence assets for law enforcement purposes in violation of EO 12333;
5. Misconduct by WARCOM and subordinate command personnel in attempting to improperly influence the proceedings and taint the jury pool;
6. Misconduct by WARCOM command personnel for acts of reprisal against SOC Gallagher after POTUS ordered his release from pretrial confinement; and,

One World Trade Center, Ste 8500
New York, NY 10007

timothy.parlatore@parlatorelawgroup.com
www.parlatorelawgroup.com

212.679.6312 direct
212.202.4787 fax

7. Misconduct by WARCOM and subordinate command personnel in retaliating against SOC Gallagher after the conclusion of the trial.

While some of these issues have been previously raised before the military trial court, the relief we sought was different, as the military judge's primary objective was to ensure that this misconduct didn't impact our client's right to a fair trial. Here, we are asking for something that should have happened automatically, had the involved commanders taken appropriate steps to hold the individual offenders accountable. Since that has not occurred, and none of the responsible individuals have been held accountable in any way, we are asking your office to investigate this matter so that remedial actions can be implemented to ensure that no other sailor will have to suffer the same cruelties, rights violations, or risk of wrongful conviction that Edward Gallagher did. Moreover, as the retaliation against SOC Gallagher has continued unabated, failure to hold these individuals accountable will only embolden them to continue their unlawful behavior.

I. MISCONDUCT BY NCIS PERSONNEL IN THE INVESTIGATION AND PRESENTATION OF CHARGES

The case against Edward Gallagher began when a few disgruntled members of his platoon decided to fabricate a story that would rid them of a Chief with whom they had personal grievances.[1] While a competent, impartial, and complete investigation would have revealed that these witnesses had ulterior and self-serving motives, NCIS failed utterly to implement any of the normal constitutional safeguards that protect innocent persons from wrongful arrest. Special Agent Joseph Warpinski, the lead investigative agent assigned to the case, corrupted the investigation in a multitude of ways that were designed to falsely implicate Chief Gallagher. Warpinski's transgressions included, but were not limited to, unethical interview practices; improper coaching of witnesses; delegating his investigative duties to witnesses; promising benefits and rewards to witnesses; perjuring himself during an Article 32 hearing; supervising the execution of a search warrant that terrorized the Gallagher children; and a host of other violations of the NCIS investigative manual and the Fourth, Fifth and Sixth Amendments of the U.S. Constitution. Special Agent Warpinski admitted virtually all this misconduct under oath. His conduct was appalling, he cannot be trusted, and he should never be permitted to act as a criminal investigator in any capacity again.

This investigation began on 6 April 2018 when SOC Craig Miller reported an alleged Law of Armed Conflict (LOAC) violation, which purportedly occurred approximately a year prior. Miller's fairytale was soon adopted by other members of Alpha Platoon who had differences with Chief Gallagher and was presented to NCIS. SA Warpinski then built a prosecution of Chief Gallagher around a narrative that he knew was fake, phony and fictitious.

On 10 April 2018, SA Warpinski, sat down to interview the complainant, SOC Miller. Even though this was the very first interview of the entire investigation, SA Warpinksi began by lying to SOC Miller and letting him know that he had already reached his conclusions, saying that NCIS "already ha[s] our post-mortem take on this" and that there is a team on the ground in Iraq

[1] Again, this submission is not an attempt to re-litigate the case, so we do not go into detail on all of the history and credibility issues with the witnesses. Their testimony was rejected by the jury who found them not credible. More information on the underlying facts can be supplied.

gathering evidence. He then explained to SOC Miller that "[t]his [interview] will go under a source file. So this – it's not like they could look at this recording and the interview or anything like that," which was entirely untrue. SA Warpinski then proceeded to let SOC Miller tell his story, while declining to ask any of the deeper questions that one might expect from a professional federal investigator or seek any corroboration of the details he did receive. What shines through clearly in the video of this first interview is SA Warpinski's excitement and desire to ensure that he can fit together evidence to support his admitted foredrawn conclusion – that SOC Gallagher was guilty.

Over the next several months, SA Warpinski continued to manipulate witnesses and evidence in order to incriminate Chief Gallagher. He abandoned any semblance of a fair and factual investigation. Indeed, at one point, Warpinski's conduct was so outrageously biased against Gallagher that he got into a verbal altercation with another NCIS agent - SA Seth Goodwin – who had expressed serious concerns over SA Warpinski's conduct. SA Warpinski responded to these criticisms by yelling "what are you, his defense attorney?"

NCIS executed a search warrant on SOC Gallagher's home. Although they already had SOC Gallagher in custody and knew that his young children were home alone, they entered using full assault gear and dragged the children out of the house in their underwear at gunpoint and made them stand on the street in full view of the neighbors. SA Warpinski then lied about this under oath during SOC Gallagher's Article 32 hearing. It was only during the trial that another agent, Brian Frank, admitted that NCIS had abused, exploited and mistreated the Gallagher children.

Also, during the Article 32, SA Warpinski committed perjury to ensure that an additional charge of attempted murder would be included in the specifications, despite the utter lack of probable cause. The charge involved the alleged shooting of a young Iraqi girl. Not a shred of evidence existed to support this charge other than the preposterous, uncorroborated testimony of SO1 Joshua Vriens, who was not even present at the time of the alleged incident. SO1 Vriens claims to have seen a civilian girl get shot in the stomach but admitted that he did not see or suspect SOC Gallagher's involvement and actually believed that ISIS had shot her. In a dishonest and corrupt effort to pin this shooting on SOC Gallagher, SA Warpinski testified that, "it was later that evening that one of the other platoon members [SO1 Arrington] came up to SO1 [Vriens] and mentioned, "did you see Chief Gallagher shot that girl?" However, at the time that SA Warpinski testified, he knew that SO1 Arrington denied this statement, or any knowledge about the allegations related to the shooting or death of a young girl. Shockingly, although SO1 Arrington's denial was memorialized in the videotaped interview, SA Warpinski was shielded from any potential cross-examination on this subject because the video had been split into two separate files and prosecutors withheld the relevant portion of the video from the defense.

To further his dishonest efforts, SA Warpinski improperly cultivated personal friendships with witnesses and communicated with witnesses via text message for months about the facts of the case. Warpinski freely planted in the minds of the witnesses his own opinions about the case, and he encouraged witnesses to compare stories with each other, sharing investigative documents that were subject to a protective order, and telling them to read newspaper stories about the case. Worse, he withheld all of these text messages from disclosure until just before the trial when the defense demanded copies and the Court ordered disclosure.

At no point did NCIS leadership exercise control or supervision or reign in Warpinski. The This failure allowed the corrupt conduct to grow like a cancer. The failure of NCIS leadership to properly oversee and supervise his performance is inexcusable.

II. MISCONDUCT BY RLSO SW PERSONNEL

Shoddy investigations unfortunately do happen, but the gatekeepers who prevent those investigations from turning into failed or wrongful prosecutions are the attorneys who evaluate, charge and prosecute the cases. Here, the legal oversight and evaluation was entirely lacking, as CDR Chris Czaplak, the lead prosecutor, was blinded by the same ambition that afflicted SA Warpinski and chose to abandon all ethical principles and ignore the facts to pursue his goal of convicting SOC Gallagher.

CDR Czaplak engaged in a pattern of unlawful and unethical behavior, repeatedly withholding exculpatory evidence from the defense and, when confronted about his discovery violations, lying about it. When these illegal efforts failed to produce the desired result of SOC Gallagher's surrender, the Government escalated its efforts to dangerous and unprecedented levels by spying on government and civilian defense counsel, private citizens, and a member of the media.

Wrongful Withholding of Evidence

From the inception, CDR Czaplak established a pattern and practice of withholding evidence from the defense that did not support his false theory. This began with the improper withholding of portions of the witness interviews before the Article 32 hearing that would have revealed SA Warpinski's perjury and continued until just before his disqualification. In several instances, he improperly withheld evidence, parts of which were then leaked to the press, prompting defense counsel to inquire why the press was receiving discovery that the defendant was not. Routinely, CDR Czaplak then lied about the existence of such evidence and then, after motions are filed, he belatedly disclosed the documents. While the Court declined to impose sanctions because the defense finally had the documents and could use them to prepare for trial, nobody has ever held CDR Czaplak accountable for this pattern of unlawful behavior.

Perhaps the most troubling incident related to the withheld proffer by a witness' attorney who provided the CDR Czaplak with a significant alternative theory of death. Specifically, multiple witnesses had information that the platoon's medic, SO1 T.C. Byrne was performing medically unnecessary procedures on the dying terrorist for skill development purposes. On 22 May 2019, after multiple protestations that there was no more discovery to provide, the defense directly confronted CDR Czaplak and his assistant, LT Brian John, about this proffer and they denied the contents outlined above. What quickly became clear was that CDR Czaplak had concealed this proffer from his own junior prosecutors. Almost a week later, CDR Czaplak finally provided an incomplete writeup of the contents of the proffer session. If Defense Counsel had not learned from an independent source that the proffer existed, it is highly unlikely that CDR Czaplak would have ever disclosed it. What is perhaps more egregious is that CDR Czaplak was the only person at the RLSO who knew about this proffer. He not only kept it a secret from the defense,

he withheld the information from his own trial counsel, who were also subordinate to him. CDR Czaplak attempted to leverage his position to withhold crucial information in hopes that he would be able to secure the conviction of an innocent man.

Intimidation of Witnesses and Obstruction of Justice

While they attempted to promote a false narrative that SOC Gallagher's platoon had turned on him, the reality is that there was a split in the platoon, with only a few members supporting the false narrative. For those witnesses whose stories did not fit the agenda, CDR Czaplak and SA Warpinski were not only disinterested – they actively and intentionally abused their titles and positions in an effort to suppress those statements. The weapons they used were selective immunity grants, fake target letters, and false charges.

While immunity grants are ordinarily a great tool to assist in getting full and truthful information, here they were selectively and narrowly used for the purpose of coercing witnesses to testify consistently with the Government's star witness, SO1 Craig Miller, rather than giving them the freedom to testify truthfully.

Although corrected by the military judge, prosecutors had improperly told witnesses that their testimonial immunity deals required them to testify consistently with their initial NCIS statements and that if they contradicted this initial statement in any way, they would be prosecuted. This presented certain witnesses with an impossible choice:

1. Refuse to testify and risk the consequences of disobeying a lawful order;
2. Testify consistently with their statements to NCIS, committing perjury and potentially causing an innocent man to be sentenced to a mandatory minimum life sentence; or
3. Testify truthfully and ensure that they will be prosecuted for making a false official statement.

Ultimately, the military judge corrected this false impression and allowed SO1 Corey Scott to testify truthfully, but in a manner that CDR Czaplak did not want.

The entire case of *United States v. Portier*, which was dismissed after the result of this case, is an example of this, as prosecutors charged LT Portier for the strategic purpose of silencing him as a witness for SOC Gallagher and coercing him to change his story and testify against SOC Gallagher, so that his story matched SOC Miller's story. LT Portier was a necessary and material witness to this case, but he was effectively sidelined from testifying because of the criminal charges he personally faced, to be tried at a separate general court-martial.[2] In fact, four of the six Specifications against LT Portier directly referenced SOC Gallagher by name, and the remaining two Specifications cited directly to incidents upon which SOC Gallagher was also being charged.

It is clear that the Government never intended in good faith to prosecute LT Portier. On 4 January 2019, *prior to* LT Portier's referral, CDR Christopher Czaplak contacted LT Portier's attorney, Mr. Jeremiah "Jay" Sullivan, to begin plea negotiations. Mr. Sullivan responded on 11 January 2019, proposing terms that his client would be willing to accept. CDR Czaplak was

[2] Charges against LT Portier were dismissed after SOC Gallagher's court-martial.

nonresponsive, but allegedly mentioned in court *three months later* in early April 2019 that a nonjudicial punishment (NJP) option was available to LT Portier. Mr. Sullivan stated that they "again . . . offered to accept NJP and never heard back." Finally, CDR Czaplak responded to Mr. Sullivan on 23 April 2019 that the "terms [offered by Mr. Sullivan on 11 January 2019] are rejected" and then conditioned the possibility of NJP and testimonial immunity upon a M.R.E. 410 proffer session with the Government. Mr. Sullivan stated to CDR Czaplak each time that LT Portier's NJP and immunity should not be conditioned on whether or not the Government likes his proffer.

Desperate to force LT Portier's hand, on 8 May 2019, CDR Czaplak sent an email to Mr. Sullivan stating, "We sent a target letter to LCDR Breisch. If your client would like to proffer with us and resolve this case at NJP, please let me know soonest." Again, Mr. Sullivan responded, "LT Portier has always been willing to testify truthfully at an NJP or Trial. However, we do not agree to make his NJP contingent upon the quality of his testimony at a proffer."[3] Was CDR Czaplak implying that LCDR Breisch would implicate LT Portier to save himself? Or, was CDR Czaplak emphasizing that it would stop at nothing to remove all witnesses who did not support its theory? Or both? Clearly, such a blatant statement was just a scare tactic to convince LT Portier to alter his testimony to fit the Government's theory – at the expense of LCDR Breisch.

The target letter[4] received by LCDR Robert Breisch was not only used to intimidate LT Portier, it was used to sideline LCDR Breisch from testifying.[5] In SA Warpinski's interview with SOC Miller on 10 April 2018, SOC Miller stated that he first reported SOC Gallagher's alleged misconduct to LCDR Breisch in February 2018, and again during a platoon meeting in March 2018. SOC Miller claimed that on 6 April 2018, he met with LCDR Breisch and LT Portier, during which time SOC Miller convinced them to begin an investigation against SOC Gallagher.

To the dismay of CDR Czaplak and SA Warpinski, LCDR Breisch did not corroborate SOC Miller's story. In SA Warpinski's interview with LCDR Breisch on 20 April 2018, LCDR Breisch stated that SOC Miller approached him in October 2017 regarding his dissatisfaction with SOC Gallagher, which amounted to nothing more than petty allegations that SOC Gallagher stole from ST7-A members' care packages. LCDR Breisch advised SOC Miller that if he had any criminal allegations against SOC Gallagher, he needed to report them, but SOC Miller did not make such a report. After hearing rumors that members of ST7-A were displeased with SOC Gallagher, LCDR Breisch questioned SOC Miller once more to ask him if there was anything criminal in nature to report against SOC Gallagher, and SOC Miller again told him that there was not. LCDR Breisch also stated that he advised ST7-A members on several occasions that they were obligated to report any criminal allegations against SOC Gallagher – specifically, any LOAC violation – but again, LCDR Breisch was told, "No, that's not it." It was not until 6 April 2018

[3] By this time, CDR Czaplak had read through almost 3000 pages of discovery in this case, participated in countless witness interviews, and had a fairly certain idea as to how LT Portier might testify.

[4] A target letter is a letter utilized by the Department of Justice to notify the recipient that the government possesses information sufficient to indict the recipient.

[5] Target letters serve a legitimate purpose, as used by the U.S. Attorney's Office, but that purpose was perverted by these prosecutors to instead serve as an instrument of Government sponsored witness intimidation. It should be especially noted that target letters are virtually unheard of in the military justice system and are never used by any legitimate prosecutorial agency in the manner that it has been misused here.

that SOC Miller reported to LCDR Breisch and LT Portier that SOC Gallagher had stabbed an ISIS prisoner. LCDR Breisch then immediately reported that allegation.

On 8 May 2019, *over a year* after his witness interview with SA Warpinski, CDR Czaplak sent a target letter to LCDR Robert Breisch[6] to inform him that he was suddenly the target of an investigation, which was a flagrant effort to intimidate him into invoking his Fifth Amendment privilege and refuse to testify as a defense witness.

Unfortunately, LT Portier and LCDR Breisch were not the only witnesses that CDR Czaplak and SA Warpinski sought to suppress. Several other witnesses initially gave statements that were either inaccurately memorialized by SA Warpinski, the result of improperly suggestive interview techniques, or inaccurately given out of fear that the truth would lead to charges against either SO1 Byrne (whom other witnesses sought to protect) or the witnesses themselves. Because these inaccurate statements supported the prosecutors' false narrative, CDR Czaplak, made every effort to obstruct and threaten these witnesses to prevent them from telling the full truth.

The interests of justice are best served when witnesses are free to tell the truth and correct any earlier misstatements, half-truths, misunderstandings, or even lies. SA Warpinski and CDR Czaplak abused his title and power to foreclose these witnesses from this opportunity.

III. MISCONDUCT BY RLSO SW, COS RLSO, AND OJAG IN THE ILLEGAL WARRANTLESS TRACKING OF DEFENSE COUNSEL'S EMAILS

The prosecutors' corruption reached a new level when CDR Czaplak and NCIS decided to conduct unlawful electronic surveillance of the communications of government and civilian defense attorneys, private citizens, and a member of the media. This unlawful action was described by the government as an *effort to investigate leaks of documents under protective order*, but the reality of their actions did not match their claimed purpose and revealed a far more ominous intent.[7]

In his *Findings of Fact and Conclusions of Law on Defense Motion to Dismiss for Prosecutorial Misconduct and Unlawful Command Influence*, dated 7 June 2019, Judge Aaron Rugh determined that the US Navy RLSO SW, specifically, CDR Czaplak, violated SOC Gallagher's rights under the Fourth, Fifth, and Sixth Amendments of the Constitution. As a direct

[7] From the moment he was arrested, the Government made significant efforts to ensure that the public narrative surrounding this case would be damning to SOC Gallagher and supportive to the Government's false narrative. These efforts included both use of the Navy's public affairs apparatus, as well as anonymous sources and leaks of protected documents. From the very first article about this case, published 19 September 2018, "graphic details of the prisoner of war's alleged execution were repeated to Navy Times by seven officials at five flag commands, including the Pentagon." https://www.navytimes.com/news/your-navy/2018/09/20/navy-seal-in-brig-while-agents-probe-killing-in-iraq/. Similar leaks continued unabated until the date of trial, with the vast majority of leaks being negative to SOC Gallagher.

result of CDR Czaplak's abuse of power and unethical behavior, he was disqualified as trial counsel in this case and SOC Gallagher was released from pre-trial restraint.[8]

The only entities in possession of the leaked subject documents were NCIS, the prosecutors, and defense counsel. Given the content of the leaked documents, which included the denial of a Fourth Amendment suppression motion, common sense should have immediately ruled out defense counsel as potential suspects and focused the investigation on NCIS and the prosecutors. In a classic case of the wolf guarding the henhouse, NCIS opened an investigation on 8 January 2019 into the leaks. Worse yet, this investigation was conducted by NCIS agents in the Southwest Field Office, including SA Chris Leiphart, who was an active participant assisting SA Warpinski in the investigation into SOC Gallagher, assisting with the cell phone seizure, the search of SOC Gallagher's home, interviews of SOC Miller and Mr. Dille, searching the cage of SOC Gallagher, and signed the affidavit to search a phone of a potential witness.

On 8 May 2019, CDR Czaplak and NCIS SSA Curtis Evans approached the Court to obtain the Court's concurrence on an investigative step they intended to take against members of the trial team, NCIS, or other government-associated persons. However, from reading the Court's summary of this meeting, it appears that CDR Czaplak and SSA Evans misled the Court, both on the methods, as well as the anticipated suspects:

> As part of their ongoing investigation, NCIS intended to imbed code within a 2-page document to be electronically disclosed to defense and to be posted in various government-access-only locations (e.g. CLEOC, trial department share drives). The embedded code would then assist investigators in tracking further distribution of the document similar to "pen register" collection. Information gleaned from this collection could be used in support of a request for a Federally-issued warrant as necessary…It is apparent from the tenor of the conference, that the government is concerned that the violations of the court's orders are being perpetrated by members of the trial team, NCIS, or other government-associated persons…should the investigation reveal the identity of the unknown person then the court may determine that disclosure to the defense is necessary to support motions related to unlawful command influence, prosecutorial misconduct, or other relevant requests for relief.

NCIS files show that these representations made to the Court by CDR Czaplak and Curtis Evans were materially false and/or misleading in several respects:

1. No code was ever embedded into a 2-page document. Instead, a tracking beacon was placed into emails to defense counsel;

[8] Additional remedies granted by Judge Rugh: the trial date was continued from 28 May 2019 to 17 June 2019, the defense was granted two additional peremptory challenges (for a total of three peremptory challenges), and the court-martial was prohibited from adjudging a sentence that included confinement to life without eligibility for parole.

2. No trackable document was ever posted in various government-access-only locations (e.g. CLEOC, trial department share drives);
3. Although they led the Court to believe that they suspected the violations were from government-associated persons, the actual investigative step only targeted members of the defense team;
4. They failed to disclose that the "2-page document" would be a Brady/Giglio Notice and therefore something that would not be enticing to be leaked by anyone on the Government's side;
5. They failed to disclose that they would be sending tracking beacons to defense counsel on several emails, including those not covered by the protective order;
6. They failed to disclose that they would be sending a tracking beacon to a member of the media;
7. Although they compared the technique to a pen register, they failed to disclose that they made no effort to comply with the Stored Communications Act requirements; and
8. They failed to disclose the full extent of the information that can be collected.

Beginning on 8 May 2019 and continuing until these efforts were quickly discovered by defense counsel, CDR Czaplak attached a tracking beacon to all emails sent to the defense team, without regard to whether the emails involved materials subject to the protective order or not. This tracking beacon gave investigators access to the following information about anyone opening the emails:

1. Internet Protocol ("IP") Addresses;
2. Physical location;
3. Time the email was opened and how long it was open;
4. What type of device is used and operating system (i.e. iPhone, Android, Mac, PC);
5. What type of email system used (i.e. webmail);
6. Whether it was forwarded to anyone, and all of the above information about the individual it was forwarded to.

Because the Government attached unique tracking beacons to each email, which covered different subject matters, this allowed the Government to track internal defense team communications. SOC Gallagher's defense team is geographically dispersed, which permits ready triangulation of each member of the team. This could also be used to triangulate and identify other experts and consultants being used to unlawfully intrude into the internal processes of SOC Gallagher's defense team.

On 20 May 2019, the Court disclosed the NCIS investigative file on this operation, which revealed a stunning and frightening overreach by the Government. These documents showed that from January through 25 March 2019, the period of time that leaks were exclusively damaging to SOC Gallagher, it appears that the only investigative steps taken were to interview five witnesses (all of whom predictably denied involvement). After 25 March 2019, contemporaneous reporting ceased entirely.

On 30 March 2019, POTUS ordered SOC Gallagher released from pre-trial confinement and the media coverage of this case began to shift away from blind allegiance to the prosecutor's narrative.[9] NCIS investigators ramped up their efforts and began targeting defense counsel, as well as Carl Prine, and stopped making any contemporaneous reports. As such, and conveniently for the government, no reports exist of any investigative step from 25 March 2019 until 15 May 2019.

From this point forward, in addition to focusing on the incorrect parties, NCIS' investigation suffered from the threshold flaw of a failure by the investigators to even consider whether the conduct they were investigating even constituted a crime. While the early leaks of NCIS files that furthered the Government's narrative *did* violate the protective order, subsequent "leaks" that investigators attempted to pin onto defense attorneys did not. Specifically, (a) Investigators targeted Brian Ferguson, an attorney for witnesses who were not subject to the protective order and therefore could not be held in contempt for violating the order; and (b) Investigators spent an inordinate amount of time on a letter sent to the convening authority requesting immunity, which was not a court filing and therefore not a protected document.[10]

In the aftermath of the illegal conduct coming to light, the Government, up to and including the Office of the Judge Advocate General ("OJAG") made several statements intended to minimize and justify prosecutors' illegal conduct and influence the outcome of these proceedings. On 20 May 2019, the Office of the Judge Advocate General released a statement in which they affirmatively and definitively stated that their actions with regard to the alleged email spying were legal. They stated that, "[t]he government is acting as part of a lawful, authorized, and legitimate investigation into the unauthorized disclosure of information associated with the case." This statement, issued under the authority of the Judge Advocate of the Navy opined as to a legal conclusion that the Court had not yet made, in an apparent effort to improperly influence the military judge.

IV. INTELLIGENCE OVERSIGHT OF NCIS'S PRACTICE OF USING COUNTER-INTELLIGENCE ASSETS FOR LAW ENFORCEMENT PURPOSES IN VIOLATION OF EO 12333

While the defense never provided any documents to members of the media, NCIS launched an inquisition into Defense Counsel. In so doing, NCIS flagrantly violated Executive Order 12333 by using their intelligence capabilities to target U.S. persons. Specifically, they tasked intelligence specialists from the NCIS Counter-Intelligence division to create a dossier of deceptively negative information on defense counsel. Although the Government claimed that the investigation was not targeting any specific individual, they only employed these intelligence assets to target Mr. Ferguson, Jeremiah Sullivan, Carl Prine and SOC Gallagher's civilian defense team. There was no background investigation ever conducted on any of the prosecutors or military defense counsel.

[9] Addressed infra.

[10] Investigators became focused on this document after CDR Czaplak accused defense counsel of lying about not providing it to Carl Prine. CDR Czaplak certainly should have known better than to accuse defense counsel of improperly disclosing a document that was not even a protected document.

During the hearing, it became clear that NCIS routinely integrates the counter-intelligence assets into criminal investigation, in direct contravention of EO 12333.

V. MISCONDUCT BY WARCOM AND SUBORDINATE COMMAND PERSONNEL IN ATTEMPTING TO IMPROPERLY INFLUENCE THE PROCEEDINGS AND TAINT THE JURY POOL

Not surprisingly, the abuse of power and position in this case did not stop at NCIS and the prosecutors; it was pervasive within SOC Gallagher's own command. In the case of CAPT M.D. Rosenbloom, then-Commodore of NSWG-1, SOC Gallagher was also the victim of unlawful command influence and reprisal. Specifically, CAPT Rosenbloom improperly prejudged his desired outcome for this case (i.e., conviction of SOC Gallagher), and he unlawfully used his authority to attempt to influence the outcome of this case by intentionally hampering SOC Gallagher's ability to assist in his own defense, to include tainting witnesses and threatening SOC Gallagher's supporters.

In addition to actively preventing witnesses from testifying on SOC Gallagher's behalf, CDRE Rosenbloom sought to destroy SOC Gallagher's reputation and convince anyone and everyone in NSW that he was guilty without question of murdering an ISIS terrorist. He and CMDCM Steve Ward, who admitted to having *only second- or third-hand information about the accusations made in this case*, hosted all-calls with each NSW Command on the West Coast and told them all that they had seen video evidence that SOC Gallagher was guilty. This is interesting, because one of two things is true here, either of which is damning: (a) they saw the video and lied about what they saw (because there is no video depicting SOC Gallagher committing a criminal act) or (b) they did not see the video and lied to propel the narrative that SOC Gallagher was guilty.

Not surprisingly, based on assertions made by the two highest-ranking officer and enlisted individuals on the NSW West Coast, SOC Gallagher was treated like a leper, and leadership throughout every Command began counseling SEALs who were openly supporting SOC Gallagher. They were told to keep their opinions to themselves and that the men who made the accusations against SOC Gallagher were heroes and should be treated as such.

At SEAL Training Detachment (TRADET), where SOC Gallagher was attached, the CO, CDR Sean Glass, and CMDCM Michael Birkenbach, went to each training department and continued to spread the narrative that SOC Gallagher was guilty of murdering an ISIS terrorist, although they, too, had no proof of this allegation. They preached that anyone who was part of the "real brotherhood"[11] could turn-in their tridents. They insinuated that SOC Gallagher's wife, Andrea, was crazy, and advised the SEALs not to view her Instagram account, which contained information contrary to their narrative.

The false narrative that SOC Gallagher was guilty – months before a trial had begun – spread all the way to Washington, DC, where SEAL officers were telling Congressional

[11] A term used for those SEALs who supported SOC Gallagher.

Representatives and the White House Chief of Staff not to support him – *all based on a video that they had not seen*.[12]

One significant figure who implemented NSWG-1's unlawful influence is JAG LT Keleigh Anderson, who lied to SOC Gallagher's parents, was a constant fixture in the courtroom, actively assisting prosecutors, and generally acting as the instrumentality of the command to influence the proceedings.

VI. MISCONDUCT BY WARCOM COMMAND PERSONNEL FOR ACTS OF REPRISAL AGAINST SOC GALLAGHER AFTER POTUS ORDERED HIS RELEASE FROM PRETRIAL CONFINEMENT

When SOC Gallagher was sent to pretrial confinement following his arrest on 11 September 2018, CDRE Rosenbloom began placing irrational restrictions upon him for no other reason other than to punish him. When he learned that SOC Gallagher's teammates were visiting him on a weekly basis, CDRE Rosenbloom put a stop to it and made a list of individuals who were allowed to see him, which was limited to the CO and CMC of his command (who only visited twice in the nine months he was confined).

While in confinement, SOC Gallagher required an escort to take him to medical and legal appointments; however, CDRE Rosenbloom often failed to appoint an escort, causing SOC Gallagher – on multiple occasions – to completely miss appointments. In short, CDRE Rosenbloom prevented SOC Gallagher from receiving medical treatment and routinely acted in a way to deny SOC Gallagher from meeting with his legal team. This behavior was consistent with the way that SOC Gallagher was arrested: in the middle of receiving exclusive, sought-after treatment for TBI/PTSD. Because of CDRE Rosenbloom, SOC Gallagher did not receive the medical treatment he needed to treat injuries he received over the course of *eight* combat deployments. And, because CDRE Rosenbloom assumed SOC Gallagher was guilty anyway, he did not think it necessary for SOC Gallagher to meet with his attorneys so that he could prepare his defense – a defense that CDRE Rosenbloom had already decided was worthless.

On 30 March 2019, SOC Gallagher's release from confinement was ordered by POTUS via Twitter: "Navy Seal #EddieGallagher will soon be moved to less restrictive confinement while he awaits his day in court." On 1 April 2019, CDRE Rosenbloom issued an order "releas[ing] [SOC Gallagher] from Naval Consolidated Brig Miramar while pending court-martial."[13] Following this statement were approximately two pages of detailed restrictions that SOC Gallagher was to adhere during his release from pretrial confinement. The Government provided Defense Counsel with no written order from POTUS or further details of POTUS' order. On or about 2 April 2019, the Court stated that the order from POTUS releasing SOC Gallagher from pretrial confinement rendered moot Defense Counsel's *Motion to Reconsider Motion for Appropriate Relief [and] Release from Pretrial Confinement*, and as such, the Court cancelled a previously-

[12] Because of deep level of misinformation promulgated by Navy SEAL commanders, I sought and received special permissions from Judge Rugh to show the video to Congressional Members, dispelling this false narrative.
[13] Letter from CDRE Rosenbloom, 1626 SER 00/124, 1 Apr 19.

scheduled Article 39(a) hearing. On or about 5 April 2019, Defense Counsel sent a letter to CDRE Rosenbloom detailing the reasons why his pretrial restriction order was illegal and should be rescinded, to which he was nonresponsive.

Upset with this turn of events which undermined his authority, CDRE Rosenbloom immediately set about undermining the President's decision through the imposition of completely unnecessary and punitive restrictions, the target object of which was to hamper SOC Gallagher's ability to prepare for trial and entrap him into violating the terms so that he could be remanded back to the brig. Despite numerous attempts to bring the illegality of these actions to CDRE Rosenbloom's attention, in the hopes that he would reverse course, CDRE Rosenbloom remained intransigent and defiant of both the Orders of the POTUS and the principles of the Constitution, which he swore to uphold and defend.

The conditions of restraint imposed by CDRE Rosenbloom served absolutely no legitimate purpose and served only to punish SOC Gallagher, which were in direct violation of RCM 304(f). These conditions of restraint were blatant acts of an abuse of power by CDRE Rosenbloom, who sought to thwart the authority of the President and unlawfully assert his own apparent authority. Judge Rugh ultimately ruled that CDRE Rosenbloom's restrictions had prohibited SOC Gallagher from preparing for his own trial.

VII. MISCONDUCT BY WARCOM AND SUBORDINATE COMMAND PERSONNEL IN RETALIATING AGAINST SOC GALLAGHER AFTER THE CONCLUSION OF THE TRIAL

The Unites States Navy – especially the NSW and OJAG – are still determined to make an example out of SOC Gallagher, which is nothing more than gross retribution. The bizarre truth here is that SOC Gallagher did nothing to garner such retribution aside from defend himself against a witch hunt conducted by NCIS and prosecutors. This case exposed abuse of power and reprisal at almost every level of Command, and it unmasked a broken and corrupt military justice system. Humiliated, they continue to try to cover it up by making SOC Gallagher look like a criminal and praising the individuals who committed acts of abuse and reprisal against SOC Gallagher. Although SOC Gallagher was found innocent of these egregious charges by a panel of his peers, the Navy has made it a priority to blacklist him and turn public opinion against him.

Judge Rugh ruled that CDR Czaplak and the prosecutorial team committed misconduct in this case to such an extent that CDR Czaplak – the lead counsel – was removed from the case entirely. As detailed above, the prosecutors and NCIS continually acted without regard for their ethical responsibility to seek justice. Instead, they sought a conviction. Thankfully, justice prevailed and the Government was not victorious, but in spite of this, the Navy JAGC refused to accept that it needed to look inward at its own processes. In short, the RLSO had encouraged CDR Czaplak to move forward in tracking defense counsel emails – an unlawful and unethical act – and they refuse to accept responsibility for encouraging – and publicly condoning, this malfeasance. In fact, after the trial, CAPT Gary Sharpe, COS RLSO[14], traveled from Washington, D.C. to San

[14] Discovery documents show that CAPT Sharpe was fully briefed on the illegal email tracking operation but failed to raise any objections or take any steps to prevent this illegal conduct from occurring under his supervision.

Diego to present the Government trial counsel with Naval Achievement Awards (NAMs) for their efforts on SOC Gallagher's case. These NAMs were signed by CAPT Larrea, RLSO Southwest. It is a ridiculous notion to reward a losing team, but rewarding an unethical team that tried to send an innocent man to prison for the rest of his life, is an abomination to the U.S. Navy, and the use of tax payer dollars for CAPT Sharpe to travel from Washington, D.C. to present these awards was an absolute waste of resources. Ultimately, POTUS' intervention was required to correct this abuse of power flexed by the Navy JAGC, and the NAMs were rescinded.

The Navy JAGC was not the only organization who attempted to save its own reputation; the NSW, an organization that SOC Gallagher dedicated his life, has treated him like a leper. Since the acquittal, WARCOM and NSWG-1 have taken numerous retaliatory actions against SCO Gallagher. NSWG-1 has issued Military Protective Orders (MPOs) prohibiting him from having any contact with the witnesses who testified falsely against him and even prohibiting him from stepping foot on the base.

RADM Green had put a plan into place to remove SOC Gallagher's trident but that plan was put temporarily on hold after rumors surfaced that the Commander in Chief planned to restore his Rank.

VIII. RESTRICTION AND RETALIATION

From early on in this case, SOC Gallagher's family made protected communications on his behalf with members of Congress. The involvement of Congressional members, in particular Rep. Duncan Hunter (R-CA) incensed CAPT Rosenbloom.

When the President ordered SOC Gallagher released from the brig, Rep. Hunter sent his district deputy, Tommy Marquez, to Miramar to ensure that the transfer occurred smoothly. The brig then informed SOC Gallagher that NSWG-1 had ordered them to throw SOC Gallagher back in a cell, in contravention of the President's orders, if Mr. Marquez got out of his car and had any contact with SOC Gallagher.

Later, when Rep. Hunter and his staff went to visit SOC Gallagher in Balboa hospital, NSWG-1 refused to allow the meeting to occur unless a representative of the command could sit in to monitor all discussions.

As outlined in a separate IG Complaint filed with your office by CDR Mason, NSWG-1 and WARCOM have a pattern of threatening any sailor who consults with an attorney and this extends to protected communications with congressional members.

IIX. MISCONDUCT AFTER POTUS INTERVENTION

On Friday, November 14, 2019, the Commander in Chief announced that he was restoring SOC Gallagher's rank. While this was a controversial decision, certain elements become quite open in their contempt for the President's exercise of his lawful authority.

First, CHINFO sent out an undeniably contemptuous and snarky tweet, "As the Commander in Chief, the President has the authority to restore Special Warfare Operator First

Class Gallagher to the pay grade of E-7. We acknowledge his order and are implementing it." This tweet was universally received as being a passive aggressive statement of disagreement, but grudging acceptance. If any subordinate officer passed on orders from their superior in this fashion, he would be immediately fired – "As the commander of this ship, the CO has the authority to order us to do maintenance on our equipment. We acknowledge his order and are implementing it"

Second, and more sinister, is that we have learned that on Monday morning, November 18, 2019, RADM Green assembled a staff meeting and made clear his contempt of the President and disagreement with the President's decision, before declaring that he intended to remove SOC Gallagher's trident anyway.

The White House could not have been clearer in its statement:

> Before the prosecution of Special Warfare Operator First Class Edward Gallagher, he had been selected for promotion to Senior Chief, awarded a Bronze Star with a "V" for valor, and assigned to an important position in the Navy as an instructor. Though ultimately acquitted on all of the most serious charges, he was stripped of these honors as he awaited his trial and its outcome. Given his service to our Nation, a promotion back to the rank and pay grade of Chief Petty Officer is justified.

It is incomprehensible to understand how, given the Commander in Chief's clear guidance that he felt the punishment was too severe for such a minor offense, how RAMD Green thinks it is appropriate to countermand this and increase the punishment. Moreover, no flag officer should ever be speaking contemptuously of the Commander in Chief in front of his subordinates.

CONCLUSION

The prosecution of SOC Gallagher has been plagued from the beginning with misconduct. Even after the acquittal, WARCOM seems unable to respect the constitutional principles that they have sworn to uphold in their vendetta against SOC Gallagher. It seems like the obvious question here is, "Why?" Why is NSW obsessed with punishing SOC Gallagher even though he has already suffered unjust punishment? Why is NSW seeking retribution against SOC Gallagher when it should be looking inward at its own organization? The answer is simple: It is easier to cast out SOC Gallagher and blame POTUS for his intervention than it is to correct an internal leadership problem. *US v. Gallagher* was a massive failure for the US Navy, because it exposed a broken system on a national level, and NSW, NCIS, and OJAG is humiliated.

Wherefore, SOC Gallagher respectfully requests that an IO outside the Navy conduct a full, complete and transparent investigation of all matters herein, including violations of the U.S. Constitution; the federal civil and criminal codes; Navy rules, regulations and policies; the JAGC Ethics Rules, and state bar rules and that the results be provided to the Trump Administration, Senate Armed Forces Committee, and State Bars and Disciplinary Committees.

These issues must be addressed and fixed so that the injustice that befell Eddie Gallagher and his family never happens to another servicemember, and the Navy can return to its critical mission of protecting the nation.

Respectfully submitted,

Timothy C. Parlatore, Esq.