UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

KATHLEEN L. WATTS, ROBERT NEWMAN, AND RYAN G. MILLER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

TROY E. MEINK, SECRETARY OF THE AIR FORCE, UNITED STATES OF AMERICA, in his official capacity,

Defendant.

Civil Action
No. 1:25-CV-1093-MSN

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Plaintiffs Kathleen L. Watts, Robert Newman, and Ryan G. Miller, on behalf of themselves and the thousands of service members they represent, challenge a single, systemic failure: the Air Force's refusal to refer eligible service members into the statutorily mandated Integrated Disability Evaluation System ("IDES").[1] Instead, the Air Force diverts them into its so-called "Pre-Integrated Disability Evaluation System" ("Pre-IDES")[2] and stops their cases before the IDES ever begins.

This case is straightforward. When a service member has a medical condition that "may prevent the Service member from reasonably performing the duties of his or her office, grade, rank, or rating," or otherwise presents a medical risk or unreasonable burden, the law requires referral into the IDES. *See* 10 U.S.C. § 1201 *et seq*. and DoD Instruction ("DoDI") 1332.18 § 5.2. The Air Force does not dispute that Plaintiffs met that standard. Yet, instead of referring them into the IDES, it routed each one into "Pre-IDES," denying them access to IDES all together.

Summary judgment is appropriate because the undisputed facts reveal that the Air Force's Pre-IDES screening process violates the Administrative Procedure Act ("APA"). Specifically, the policy is arbitrary, capricious, and an abuse of discretion because it flatly contradicts the mandate for a uniform disability evaluation process throughout the military departments.

Accordingly, on behalf of the thousands of service members in the certified Class, Plaintiffs move for summary judgment and (1) an order declaring that the Pre-IDES administered by Defendant since July 1, 2019 violated statutory law and DoD Instructions, (2) declaring that the process is arbitrary, capricious, an abuse of discretion and contrary to law; (3) enjoining further use of the unlawful Pre-IDES screening process; (4) mandating that all service members who are

[1] "IDES" refers to the Integrated Disability Evaluation System, which the DoD identifies as the primary form of the Disability Evaluation System ("DES"). DoD Instruction ("DoDI") 1332.18 § 1.2 (2022). The DES operates through two pathways: the IDES and the Legacy DES ("LDES")—which apply the same statutory and regulatory standards and procedures; the principal distinction is that, in IDES, the Department of Veterans Affairs conducts disability examinations and assigns ratings. *Id.* The "Pre-IDES" process bars entry into any form of the DES.

[2] The Air Force uses the term "Pre-IDES" to describe steps before a service member enters the DES.

determined by an authorized medical provider to suffer from a potentially unfitting medical condition be referred into the IDES process; (5) mandating that the Secretary of the Air Force repeal the Pre-IDES screening process; and (6) mandating that the Secretary of the Air Force conduct an evaluation of all service members whose cases were closed by an AMRO Board's evaluation. Our service members deserve no less than the full and fair evaluations required by law.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Federal law establishes uniform IDES standards across all branches of the military.

1. Congress has established a comprehensive framework to evaluate service members like Plaintiffs Watts, Newman, and Miller who may in the course of their service become unable to perform the duties of their office, grade, rank or rating due to physical or mental disability.

2. Federal law, specifically 10 U.S.C. §§ 1201, 1203, 1204, and 1206, authorizes the military departments to retire or separate service members who are unfit for duty due to physical or mental disability. To implement this statutory authority, Congress mandated a uniform process through which all branches evaluate potentially unfit service members. *See* 10 U.S.C. §§ 1201–1206. Pursuant to this statutory mandate, DoDI 1332.18 establishes the Disability Evaluation System ("DES") process and prescribes the overarching standards and procedures for conducting physical and mental disability evaluations uniformly across all military departments. The Air Force implements these requirements through its own regulations. *See* Department of the Air Force Manual 48-108 ("DAFMAN 48-108").

B. Referral into the IDES is mandatory

3. Entrance into the IDES is not discretionary. Federal law and DoDI 1332.18 § 5.2 provide that "competent medical authorities" "will refer" a service member for disability evaluation when a medical condition "may prevent" the reasonable performance of the duties of the member's office, grade, rank, or rating. The Instruction further requires that service members with conditions that appear to be permanently unfitting "will be referred into the IDES within 1 year of identification of the condition." *See* DoDI 1332.18 § 5.2(a)–(b). Moreover, a service member may not self-refer to the DES; instead, the IDES process begins when a service member's

commander, the commander of the medical treatment facility treating the service member, or the service member's individual medical or dental officer refers the service member for medical evaluation. *See* DoDI 1332.18, *supra*, § 5.2; AFI. 36-3212, §§ 1.3–1.4 AFM 48-108.

4. The referral obligation is triggered by the medical determination itself. Once a competent medical authority—such as a treating physician or medical specialist—identifies a condition that may impair duty performance or fails medical retention standards, referral into the IDES is required as a matter of law. Treating physicians and medical specialists who diagnose these conditions are themselves "competent medical authorities" within the meaning of the regulation and their clinical determinations trigger the referral requirement. The governing instruction does not permit additional layers of discretionary screening once that determination has been made. In each case involving the named Plaintiffs and Class members, a competent medical authority identified a potentially unfitting condition requiring IDES referral before the Air Force's Pre-IDES process intervened.

5. Moreover, the DoD Manual ("DoDM") 1332.18 implementing these authorities further confirms that an "authorized qualified DoD medical care provider" is responsible for initiating the referral, completing the referral documentation, and identifying conditions that may render the member unfit for duty. *Id.* § 4.2. These responsibilities reflect the exercise of clinical medical judgment by a provider evaluating the Service member's condition, rather than a determination made by a centralized administrative review body. The regulatory scheme therefore commits the referral decision to treating medical professionals and requires that, once the criteria are met, the service member proceed into the IDES for evaluation and adjudication. Any process that interposes an additional administrative determination as to whether a service member may enter the IDES is inconsistent with this governing framework.

C. The IDES guarantees procedural safeguards

6. The IDES is a formal adjudicatory system designed to ensure that no service member is separated for disability without procedural safeguards. Congress expressly guarantees that a service member may not be separated for disability without a "full and fair hearing[.]" 10 U.S.C.

§ 1214. The DoD has implemented this statutory command through DoDI 1332.18, which establishes uniform procedural protections governing referral, medical evaluation, adjudication and appeal across all military departments. *See* DoDI 1332.18 §§ 3–4. The Air Force implements these protections through Air Force Instruction ("AFI") 36-3212.

7. Upon referral to the DES, service members must receive a standardized multi-disciplinary briefing ("MDB"), which explains the stages of the IDES process, the member's rights, and the evidentiary and procedural framework governing the evaluation. *See* DoDI 1332.18 § 3.4. This briefing is provided by trained personnel, including Physical Evaluation Board Liaison Officers ("PEBLOs") and military services coordinators ("MSCs"), and includes access to government legal counsel. *See* DoDI 1332.18 §§ 3.4, 4.1; AFI 36-3212 § 3.34. PEBLOs guide the service member through the process, ensure access to required information and representation, and assist in preparing submissions and responses. *Id.* §§ 3.4, 3.9; *see also* AFI 36-3212, ¶ 2.4. 10 U.S.C. § 1214; DoDI 1332.18 §§ 3.3, 5.3.

8. Congress reinforced these notice and transparency protections by requiring the military departments to set out "[s]tandards for information for recovering service members, and their families, on the medical evaluation board process and the rights and responsibilities of recovering service members under that process, including a standard handbook on such information (which handbook shall also be available electronically)." *See* Wounded Warrior Act, Pub. L. No. 110-181 § 1612(a)(2)(G), 122 Stat. 431, 441 (2008); 10 U.S.C. § 1071 note (2008) (Medical Evaluations and Physical Disability Evaluations of Recovering Servicemembers). These requirements ensure that service members are informed participants in the IDES process and that the system operates with transparency and accountability. DoDI 1332.18 indicates IDES "disability examinations will include a general medical examination and any other applicable medical examinations that meet VA compensation and pension examination standards," and must be sufficient to assess the service member's conditions and determine whether those conditions prevent the reasonable performance of duties. *Id.* § 3.1(e). Thus, the IDES requires that fitness determinations be grounded in current,

comprehensive, medically sufficient examinations conducted in accordance with uniform standards.

9. In addition to requiring medical examinations, the IDES also requires that decisions are made through a structured, physician-led process governed by uniform standards. After referral, federal law mandates a process including Medical Evaluation Boards ("MEB") and Physical Evaluation Boards ("PEB"). *Id.* During the MEB phase, a panel of physicians reviews and evaluates the service member's complete medical situation, ultimately producing a Narrative Summary ("NARSUM") that reflects the member's clinical history and the board's independent medical assessment.

10. Service members are entitled to robust procedural protections during the MEB phase. Federal law requires the preparation of comprehensive medical documentation and guarantees service members clear notice of findings and their rights. *See* Wounded Warrior Act, Pub. L. No. 110-181, § 1642, 122 Stat. 3, 460 (2008) (codified at 10 U.S.C. § 1071 note). Under that provision, medical evaluations of recovering service members must include: (1) preparation of medical documentation for the service member; (2) the option for an Independent Medical Review conducted by an impartial healthcare professional unaffiliated with the MEB and who provides the service member with an independent assessment of whether the MEB findings adequately reflect his or her medical history; (3) the opportunity to rebut and appeal MEB findings; and (4) standards ensuring service members receive clear notice of the MEB process and their rights and responsibilities within it. These statutory protections are implemented through DoD and Air Force regulations. *See* DoDI 1332.18 § 3.2(d)–(g); AFI 36-3212 §§ 2.8–2.9.

11.Once the MEB determines one or more of a service member's medical conditions fail medical retention standards, the case must be referred to the PEB, which is the sole forum authorized to determine whether a service member is fit for continued military service due to a physical or mental disability. *See* DoDI 1332.18 § 3.3. The PEB process includes both an Informal Physical Evaluation Board ("IPEB") and, if requested, the Formal Physical Evaluation Board ("FPEB"). At the IPEB stage, the service member receives written findings and a recommended

disposition, along with notice of the right to respond, submit additional evidence, or request a formal hearing. *See id.* §§ 3.3(b), 4.2. Upon receiving their IPEB findings, a service member has the right to accept the decision, submit a rebuttal, or request an FPEB if found unfit.

12. The FPEB is a formal, non-adversarial hearing that provides one of the most important procedural safeguards within the DES. At the FPEB, a service member is entitled to a personal appearance and a full opportunity to contest adverse findings. This includes the right to present evidence, call witnesses, obtain expert opinions, and be represented by government-appointed or private counsel. *See* 10 U.S.C. § 1214; DoDI 1332.18, § 4.4; AFI 36-3212 §§ 3.27–3.34.

13. Beyond the statutorily guaranteed "full and fair hearing" before the FPEB, Congress has required an additional layer of protection to ensure the integrity and independence of disability determinations. While 10 U.S.C. § 1214 secures the right to a formal hearing at which a service member may appear, present evidence, call witnesses, and be represented by counsel, the National Defense Authorization Act for Fiscal Year 2022 further mandates that each military branch establish an impartial appellate process to review FPEB decisions. *See* 10 U.S.C. § 1214; National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 524, 135 Stat 1541 (2021). This post-FPEB appellate process must be conducted by decisionmakers who were not involved in the initial determination and must preserve core procedural protections, including the right to appear in person or via videoconference and the right to representation by government-appointed or private counsel. *See id.* § 524. Together, these provisions establish not only a right to a formal evidentiary hearing, but also a subsequent, independent review mechanism designed to safeguard against error, bias, or arbitrariness in disability determinations, thereby reinforcing the statutory guarantee of meaningful due process within the IDES.

14. No comparable right of appeal exists under the Air Force's Pre-IDES process. A service member deemed 'fit' by the Aerospace Medicine Review Optimization ("AMRO") Boards or the Air Force Personnel Center ("AFPC/DPMNR") has no mechanism for appeal. The Pre-IDES decision is effectively final and unreviewable, terminating the service member's case before they can ever access the IDES and its mandated procedural protections.

D. The Air Force unlawfully withholds mandatory IDES referral through its Pre-IDES screening process

15. Under DoDI 1332.18, "competent medical authorities will refer" a service member for disability evaluation when a condition "may prevent" the reasonable performance of the duties of the member's office, grade, rank, or rating. DoDI 1332.18 § 5.2. DoDI 1332.18 further provides that referral is mandatory when a condition, one year post diagnosis, prevents reasonable duty performance. *Id.* § 5.2(a)–(b). DoDI 1332.18 goes on to define "retention standards" as guidelines identifying medical conditions or physical defects that could render a service member unfit for further military service and may warrant referral into the DES. *See id.* (Glossary). The DoD similarly defines conditions that do not meet retention standards as those that preclude the satisfactory performance of the required military duties associated with a service member's office, grade, rank, or rating. DoDI 6030.03V2 § 5.1. When put together, referral into the IDES is, at a minimum, required whenever an authorized medical provider determines a service member's condition fails retention standards one year post diagnosis.

16. The Air Force applies that same referral standard as the DoD' for its Pre-IDES through its "Trigger Event" framework. Under DAFMAN 48-108, a "Trigger Event" is the mechanism used to identify service members with medical conditions that may render a service member unable to continue military service. *See* DAFMAN 48-108 § 2.3; Opp'n to Class Cert. at 6. A "Trigger Event" includes a condition or occurrence that may indicate medical or mental health conditions inconsistent with retention standards or deployability. Opposition to Class Certification ("Opp'n to Class Cert.") at 6. Critically, DAFMAN 48-108 § 2.3.1.1 identifies a Trigger Event as when a medical provider's definitive diagnosis of a condition that fails to meet retention standards per DoDI 6130.03 V2 or DAFMAN 48-123. By definition, such a diagnosis reflects a condition that "may prevent" the member from the reasonable performance of military duties—the mandatory referral threshold under DoDI 1332.18 § 5.2. This functional preclusion is echoed in DAFMAN 48-123, which defines an "unfitting condition" as a disability that "prevents a service member from performing the duties of their office, grade, rank, or rating" and states that unfitting conditions are handled through IDES processing.

17. Taken together, these definitions establish that an Air Force "Trigger Event" based on a definitive diagnosis of a condition that fails retention standards necessarily satisfies the DoDI 1332.18 referral threshold. Because DoDI 1332.18 § 5.2 requires referral when a condition "may prevent" the reasonable performance of such duties, a condition that fails retention standards necessarily satisfies this less demanding "may prevent" threshold. Accordingly, any service member who triggers AMRO Board review based on such a diagnosis meets the criteria for referral into the IDES as a matter of law. *See* Dep't of Def., Instr. 1332.18 § 5.2.

18. Despite these mandatory referral requirements, the Air Force has created a two-step IDES pre-screening process that bars eligible service members from accessing the DES. Opp to Class Cert. at 6. Each class member was identified by a competent medical authority as having a condition that fails medical retention standards—i.e., a condition that precludes the satisfactory performance of required military duties and, at a minimum, "may prevent" the reasonable performance of those duties within the meaning of DoDI 1332.18 § 5.2. That medical determination satisfies the governing standard for referral. Yet, rather than initiating IDES processing, the Air Force interposes an administrative review that can, and routinely does, override that medical judgment and return the service member to duty without ever referring the member into the DES.

E. AMRO Boards and IRILO function as unlawful gatekeeping mechanisms.

19. The Air Force argues that the Pre-IDES process is lawful because "Trigger Events" are a broad, non-exhaustive screening mechanism used to identify service members who may require further evaluation. Opp'n to Class Cert. at 6–7; DAFMAN 48-108 § 2.3. But the Air Force does not dispute that this category expressly includes conditions that are "inconsistent with retention standards." *Id*. By regulation, such conditions are "eligible for and handled through IDES processing." DAFMAN 48-123 § 1.3.6.1. Thus, even under the Air Force's own framework, Trigger Events necessarily encompass a subset of cases involving definitive diagnoses that fail retention standards—conditions that, by definition, affect a service member's ability to perform required duties and must be evaluated through the DES. *See id*.; Opp'n to Class Cert. at 6–7.

20. Nevertheless, those service members are not referred into the IDES upon identification of such conditions**.** Instead, as the Air Force acknowledges, service members are first funneled through a preliminary AMRO Board review at the next scheduled AMRO Board meeting. DAFMAN 48-108 § 2.3.4; Opp'n to Class Cert. at 7.

21. Once the AMRO Board determines that a case warrants further review, an Initial Review In Lieu Of ("IRILO") package is assembled. The IRILO is a paper-based administrative review conducted in lieu of a formal MEB. It consists of the service member's pre-existing medical records and a commander's impact statement. Unlike the comprehensive IDES process, the IRILO does not involve new medical evaluations, VA Compensation and Pension examinations, the option for an Independent Medical Review, or legal counsel for the service member. Once the IRILO package is completed and submitted to the AMRO Board, the AMRO Board must then recommend either a full IDES processing or the service member's return to duty within 30 days. DAFMAN 48-108 §§ 2.4.2, 2.4.3.

22. The AMRO Board's recommendation does not end the Pre-IDES screening process. An additional step is then imposed through the AFPC/DPMNR, which the Air Force improperly claims is the designated competent medical authority along with the Air Force Reserve Surgeon General's ("ARC SG") offices, that makes the final decision on whether a service member is fit to return to duty without referral into DES, or to be referred into DES. DAFMAN 48-108 § 2.2.2.

23. Under the Air Force procedures at issue here, the identification of a medical condition inconsistent with retention standards does not result in a direct referral to the IDES; instead, it triggers a mandatory review by an AMRO Board. DAFMAN 48-108 § 2.3.4.

24. Even after a provider identifies a "Trigger Event," the AMRO Board has broad administrative discretion to (a) dismiss the case, (b) apply a temporary medical deferment, (c) defer review for up to 90 days, or (d) begin the IRILO process. Id. The IRILO process is specifically reserved for service members whom the AMRO Board has already identified as having conditions that "may render them unfit for continued military service" or who are "unable to deploy." *Id*. § 2.4.

25. Despite this acknowledgement, the AMRO Board may nevertheless recommend that the service member be returned to duty after reviewing the IRILO package—thus bypassing the formal MEB process entirely. *Id.* § 2.4.3.1. Further, the decision to refer an Airman into the IDES is not made by the individual treating physician but by AFPC/DPMNR or ARC SG, after receiving the IRILO package and commander's impact statement. *Id.* §§ 2.4.3, 2.4.4. This is because the Air Force improperly designated an administrative organization, the AFPC/DPMNR or ARC/SG's office, as the sole "competent medical authority," at the exclusion of the medical providers who actually diagnose service members with conditions inconsistent with retention standards. This administrative redefinition of "competent medical authority" is nowhere authorized by DoDI 1332.18, which vests the referral duty in the medical professionals making the clinical determination, not in a centralized personnel office reviewing paperwork.

26. Under the Air Force's Pre-IDES system, the "referral stage" of the IDES may begin only after the AFPC/DPMNR or the ARC SG's office determines that the service member meets referral criteria and not at the diagnosis from a "competent medical authority." *Id.* § 2.4.4.1. As a result, the Air Force's use of AMRO Boards and IRILOs establishes a de facto prescreening process that determines whether a service member will ever be allowed to access the IDES, regardless of whether the conditions for mandatory referral under DoDI 1332.18 have been met.

F. The AFPC/DPMNR makes final fitness determinations (e.g., "Return to Duty") without the service member ever entering the IDES or receiving its protections.

27. Under the Pre-IDES system, AFPC/DPMNR or ARC SG serve as the final decision-makers for "return to duty" determinations. DAFMAN 48-108 § 2.2.2. The Air Force's own regulations provide that AFPC/DPMNR determinations are final and carry the same effect and authority as an MEB finding, and yet they are issued without any of the procedural safeguards that Congress mandated for the DES.

28. These regulations circumvent the comprehensive due process protections mandated by Congress. Because these determinations result in "return to duty" dispositions for members

identified with potentially unfitting conditions, the AFPC/DPMNR is performing the final adjudicative function of a PEB without any of the attendant procedural safeguards.

29. Unlike findings issued as part of the IDES process, which must "convey the findings and conclusions of the board in an orderly and itemized fashion with specific attention to each issue presented by the member," Pre-IDES determinations require no explanation, structure, or response. *See* 10 U.S.C. § 1222. As a result, the Pre-IDES operates as a one-sided screening mechanism in which the Air Force may make dispositive disability determinations without accountability, without engaging the service member's evidence, and without providing any rationale for its conclusions. That absence of explanation is not merely a procedural defect—it is the mechanism by which the Air Force avoids triggering the statutory and regulatory protections that attach once a service member is referred into the DES.

30. Because those protections are only triggered upon formal IDES referral, service members screened out through the Pre-IDES process are categorically denied them. Specifically, service members excluded at the Pre-IDES stage are also denied the comprehensive medical examination process that forms the foundation of the DES. Under DoDI 1332.18 and its implementing manual, DoDM 1332.18, entry into the IDES requires a MEB based on a thorough, contemporaneous clinical evaluation conducted by qualified medical providers. *See* DoDI 1332.18 §§ 3.1, 3.2, 5.2; DoDM 1332.18, Vol. 1. The Pre-IDES process, by contrast, relies solely on existing records and administrative review, without any requirement for a new medical examination, clinical assessment, or comprehensive evaluation of the service member's current condition.

31. Moreover, members in the Pre-IDES process are not provided the option of an Independent Medical Review by an impartial physician or independent healthcare professional as required under 10 U.S.C. § 1071 and DoDI 1332.18. That review is intended to ensure that MEB findings accurately reflect the service member's medical history and condition and to provide an independent check on the government's medical conclusions.

32. Service members in the Pre-IDES are also not provided legal counsel at the outset or at any stage of the Pre-IDES screening process. By contrast, DoDI 1332.18 requires that counsel be made available upon referral to advise service members regarding their rights, assist in reviewing medical evidence, and guide elections and appeals. *See* DoDI 1332.18 § 4.2. This right to counsel is a central feature of the IDES and ensures that service members can meaningfully participate in what is, in substance, an adjudicatory process. The Pre-IDES framework further deprives service members of the statutory right to a formal hearing and appeal before a PEB. Under 10 U.S.C. § 1214 and DoDI 1332.18 § 3.3, a service member who contests an IPEB determination is entitled to a FPEB, including the right to appear, present evidence, call witnesses, and be represented by counsel. DoDI 1332.18 and its implementing Manual further require that service members and their counsel have access to the evidentiary record and a meaningful opportunity to rebut adverse findings. *See* DoDI 1332.18 §§ 3.3(c)(5), 4.3; DoDM 1332.18, Vol. 1.

33. The Pre-IDES framework also deprives service members of the recent statutory reforms that reinforce these protections: the National Defense Authorization Act for Fiscal Year 2022 mandates that FPEB appeals be heard by an impartial panel not involved in the initial determination and guarantees a formal appellate process with the opportunity for personal appearance and representation. *See* Pub. L. No. 117-81, § 524. Service members screened out through the Pre-IDES process never reach the PEB stage and are therefore denied these statutory and regulatory appeal rights in their entirety.

34. The Pre-IDES process also does not include the external quality assurance reviews mandated by DoD to monitor the accuracy, consistency and uniform application of MEB and PEB decisions. *See* DoDI 1332.18 §§ 3.5–3.6; DoDM 1332.18, Vol. 1 (requiring oversight and quality assurance of IDES processes). These safeguards are designed to ensure that disability determinations are supported by sufficient medical evidence and applied consistently across the military departments.

35. The administrative deficiencies of the Pre-IDES process extend beyond the absence of substantive procedural safeguards; they permeate the Air Force's basic record-keeping. As the Air

Force conceded at the Class Certification stage, the AFPC/DPMNR does not actually maintain a centralized list of cases it reviews. ECF No. 41-1, ¶ 5.

36. Additionally, there are technological issues with the data AFPC/DPMNR does maintain. In August 2024, AFPC/DPMNR's database crashed. *Id.* ¶ 6. AFPC/DPMNR is purportedly in the process of developing a new database, which is anticipated to be online in September 2026. *Id.* In the interim, AFPC/DPMNR has limited ability to query its data. While it can query disposition (i.e., referred to IDES or returned to duty) and case type (i.e., annual review or initial review), the results generated are often not accurate. *Id.* ¶¶ 6, 7, 9. The agency, by its own admission, cannot reliably meet the obligations of DoDI 1332.18, which requires the agency to provide access to all documentation regarding a service member's case to both government counsel, the service member, and the service member's counsel. *See also* DoDI 1332.18 § 3.3(c)(5) (allowing a service member access to all records and evidence the PEB had received); § 4.3 (allowing service members and their counsel access to "all documentation pertaining to their disability case" and government counsel "full access to documentation from computerized databases and electronic medical records that relate to the Service member's disabilities.").

37. 10 U.S.C. § 1071 (note) requires that "[p]rocesses for medical evaluations of recovering service members … (i) apply uniformly throughout the military departments." Yet, the Air Force alone imposes the Pre-IDES screening process. The Army, Navy, and Marine Corps all refer service members directly into the IDES upon the identification of a potentially unfitting condition, without interposing an administrative gatekeeping step. Army Regulation 635-640; Secretary of the Navy M-1850.1, *Disability Evaluation System Manual*. The Air Force stands alone in creating this unauthorized barrier to the uniform disability evaluation system that Congress mandated. Id.

G. The Class Representatives Are Exemplars of This Procedural Harm.

1. Kathleen Watts

38. In early 2023, Ms. Kathleen Watts, a Physician Assistant in orthopedic surgery, was preparing for a scheduled separation. A routine optometry exam discovered that Ms. Watts had papilledema, triggering an emergent medical investigation. AR 131.

39. An MRI with contrast performed on February 27, 2023 diagnosed Ms. Watts with dural venous thrombosis (ACerebral Venous Thrombosis or "CVT"), a severe condition involving near-total occlusion of the venous drainage of the head. AR 131; 183.

40. This diagnosis mandated lifelong anticoagulation therapy and risked resulting in permanent vision loss. AR 131; 202. The CVT caused prostrating, migraine-like headaches occurring three to four times per week. AR 183. These headaches required Ms. Watts to lie down in a dark room until they went away. AR 177. These symptoms, if they resolved at all, were expected to last from months to years following a sinus thrombosis. AR 177; 183.

41. Because Ms. Watts was scheduled to separate on March 1, 2023, she was placed on medical hold for 60 days. AR 119. Her treating provider issued an AF Form 469, a duty-limiting profile, indicating that Ms. Watts required a MEB and imposing significant duty, mobility, and fitness restrictions, including prohibitions on running, unit physical training, and extended screen use, as well as limits on work hours. AR 129. These restrictions extended through March 5, 2024—well beyond her scheduled separation date and more than one year post diagnosis.

42. On April 19, 2023, Ms. Watt's Initial IRILO Coversheet identified her CVT as a condition that was "[p]otentially unfitting" and required evaluation for continued service under applicable medical retention standards. AR 125.

43. That recognition should have triggered referral into the Disability Evaluation System. It did not. Instead, Ms. Watts was diverted into the Pre-IDES process.

44. In place of a true MEB evaluation, the Air Force generated a records-based narrative labeled "MEB Narrative Summary." AR 131. This document was not based on any new clinical examination. AR 130–135. Yet even on that limited record, it documented that Ms. Watts would require "lifelong anticoagulation," that "frequent visits will limit time at work," and that her condition would cause "frequent absences from duty and inability to deploy." AR 0134. It further concluded that her prognosis was "unclear at this time," that her condition was "likely to remain the same or worsen," and explicitly answered "NO" to whether her condition would "improve enough in the next 12 months for member to perform all AFSC duties for their rank/position." *Id.*

45. Her official duty profile reflected the same reality. Ms. Watts was restricted from completing basic fitness requirements, including running, push-ups, and sit-ups, and was limited in her ability to perform standard physical and occupational tasks. AR 0196–0197. Her profile further required "specialty medical care" and "frequent monitoring by healthcare provider," and restricted her to locations with appropriate medical treatment capability. *Id.* She was deployable only with a waiver and could not be assigned to austere environments. *Id.*

46. Her treating physicians were unequivocal. Her neurologist warned that she had developed "multiple disabling and duty-limiting conditions" and explicitly recommended that she "undergo a MEB to adequately assess these conditions given their complexity and subsequent disability." AR 183. Her hematologist similarly concluded that her recovery had "poorly quantifiable potential" and supported referral to an MEB. AR 232.

47. The commander's assessment did not resolve these medical concerns. While recommending retention based on the ability to perform "in-garrison duties," the commander acknowledged that the "impact of the member's condition seems self-evident" and did not consult with her treating physicians. AR 136.

48. On May 25, 2023, AFPC/DPMNR approved the Modified RILO and returned her case "without action," thereby terminating further evaluation. AR 0194–0195. That determination was issued through a paper-based process used because "this member is separating within the next 30 days and requires MRILO," rather than a full disability evaluation. AR 0194.

49. The contradiction in the Air Force's determination is explicit. The same record concluded that Ms. Watts (1) could not "perform all AFSC duties," (2) required "frequent absences from duty," (3) was limited to assignments with adequate medical care, and (4) faced a condition that was "likely to remain the same or worsen," yet it simultaneously declined to refer her for disability evaluation and treated her as fit for separation. AR 0134, 0194–0196.

50. Just seven days later, on June 1, 2023, Ms. Watts was honorably separated from active duty. At the time of her separation, imaging showed "questionable stenoses" and worsening intracranial hypertension, with her neurologist warning of a risk of permanent vision loss. AR 221.

51. Because Ms. Watts was never referred into the DES, she was denied all of the procedural protections associated with that system, including a comprehensive MEB examination, a Narrative Summary based on current clinical evaluation, an Independent Medical Review, and a formal hearing before a PEB.

52. The record leaves no ambiguity. The Air Force determined that Ms. Watts had a condition that was "potentially unfitting" and documented that she could not perform all duties of her position and required ongoing limitations and care, yet refused to refer her into the only system authorized to resolve that question.

53. So, in Ms. Watts' case, the Air Force's Pre-IDES policy did exactly what it was designed to do: it acted as an unauthorized filter to prevent a severely injured Airman from accessing the "full and fair hearing" and the disability retirement benefits to which she was statutorily entitled under 10 U.S.C. § 1214.

2. Robert Newman

54. Technical Sergeant Robert Newman served honorably for 10 years as an Airborne Cryptologic Language Analyst.

55. In 2017, while deployed to Greece, Mr. Newman experienced a significant in-flight traumatic event during which he was "certain [he] was going to die." AR 101. Following this mission and subsequent "hair raising" flight experiences, he developed severe symptoms of post-traumatic stress, which eventually rendered him unable to tolerate flying. AR 101.

56. In early 2022, Mr. Newman's condition manifested sharply when he was ordered to return to flight status, triggering intense physical reactions including heart racing and severe anxiety. He was subsequently disqualified from flight service and began intensive therapy with an off-base psychologist. AR 101.

57. Mr. Newman's board-certified psychiatrist, Dr. Peter Silverman, diagnosed him with Post-Traumatic Stress Disorder (PTSD) and noted he endorsed all symptoms via PCL-5 scoring, including flashbacks, nightmares, hyper-vigilance, and cognitive distortions. AR 117. Dr. Silverman concluded that Mr. Newman's condition would not improve enough to meet retention

requirements within the next 12 to 36 months, rendering him potentially unfit for continued service. AR 105.

58. Despite this clinical documentation of a permanent, duty-limiting condition, Mr. Newman was subjected to the Pre-IDES process rather than the mandated DES. His squadron commander recommended retention, noting that while Mr. Newman was disqualified from his primary flight duties, he had satisfactorily performed "ground duties" as an additional duty First Sergeant. AR 99-100. Mr. Newman did not concur with this assessment, stating that his service constantly exacerbated his PTSD, negatively affecting his family relationships, and that he needed to "put [his] service behind [him] now and focus on [his] health." AR 100.

59. Mr. Newman suffered further procedural harm during his AMRO Board review. Instead of referring Mr. Newman for a formal MEB based on the psychiatrist's diagnosis, the AMRO Board expressed doubts about the PTSD diagnosis and stated that the condition "seems more a fear of flight than a trauma issue." AR 97.

60. Ignoring the psychiatrist's statements that Mr. Newman endorses all the symptoms of PTSD, the AMRO Board recommended that Mr. Newman be returned to duty. AR 97; AR 101. Based on this record-only dismissal by a single board member, the AFPC/DPMNR issued a final determination on August 24, 2023, returning Mr. Newman to duty with an Assignment Limitation Code. AR 96.

61. By making this fitness determination outside the IDES, the Air Force denied Mr. Newman the right to an Independent Medical Review to challenge the flight surgeon's informal re-diagnosis and stripped him of his statutory right to a formal hearing before a PEB. Mr. Newman remained on active duty until his scheduled separation on December 23, 2023, at which point he was discharged without the medical evaluation or the disability benefits to which his PTSD diagnosis entitled him. AR 101.

3. Ryan Miller

62. Plaintiff Ryan Miller served in the United States Air Force as an Aircraft Structural Maintenance Craftsman from January 2003 until November 2023.

63. In April 2016, while deployed, Mr. Miller began experiencing low back pain that worsened with physical activity. AR 90. By January 2022, despite consistent treatment including spinal adjustments and physical therapy, Mr. Miller's back, shoulder, and neck pain became duty-limiting. AR 3. In early 2022, Mr. Miller was placed on a physical profile with severe mobility restrictions and was told by his medical provider to avoid repeatedly bending at the waist, stooping, crawling, standing for prolonged periods, or lifting more than 40 pounds. AR 7-8.

64. These permanent restrictions failed retention standards, as his condition "preclude[d] the satisfactory performance of the required military duties associated" with his office, grade, rank, or rating. DoDI 6030.03V2 § 5.

65. Despite these significant permanent restrictions, Mr. Miller was not immediately referred to the IDES. Instead, he spent seven months corresponding with leadership regarding the possibility of IDES processing before being informed in August 2022 that an AMRO Board had been requested. Compl. ¶¶ 98, 99.

66. During this pre-screening phase, the AMRO Board initially paused Mr. Miller's review, stating it did not "see anything that would stop [him] from being retained" and paused his case until October 2022. Compl. ¶¶ 101, 102.

67. On December 5, 2022, the AMRO Board issued a decision finding Mr. Miller fit and returning him to duty. Compl. ¶ 105.

68. Upon this return to duty, Mr. Miller's profile was updated with extensive permanent limitations, including prohibitions from holding mobility positions, working under field conditions, or participating in unit physical training. Compl. ¶ 106.

69. Between December 2022 and June 2023, Mr. Miller worked with private counsel to informally appeal these findings, believing his case was under active review. However, in August 2023, he was informed that no formal appeal was pending because he had already been found fit for duty by the AMRO Board. Compl. ¶ 112.

70. Because this fitness determination was made through the Pre-IDES process, Mr. Miller never received VA-quality medical examinations, access to an impartial medical reviewer, or a formal hearing before a Physical Evaluation Board.

71. In November 2023, Mr. Miller was removed from active duty and transferred to the Individual Ready Reserve, where he is ineligible to receive IDES processing or disability retirement benefits.

H. Class Certification

72. This case centers on service members who met the criteria for referral into the IDES pursuant to federal law and DoD regulation but, because of the Air Force's unlawful Pre-IDES policy, were not actually referred into the IDES. The Class seeks to address this procedural harm: the denial of their rights under law because of an Air Force policy designed to block their access. The Court certified the Class on January 27, 2026 (ECF 48).

III. ARGUMENT

Plaintiffs seek relief on behalf of a Class of individuals injured due to the Air Force's Pre-IDES policy from July 1, 2019 to the present. This matter is an APA challenge to the lawfulness of the Air Force's Pre-IDES process under applicable federal law and regulations. Pursuant to Federal Rule of Civil Procedure 56, summary judgment shall be granted if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The APA requires that courts "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2).

A. Plaintiffs Have Standing to Challenge the Air Force's Pre-IDES Policy.

As a threshold matter, Plaintiffs and the certified Class possess Article III standing to challenge the Air Force's extra-statutory screening process. This Court's prior Order certifying the Class [Dkt. 47] necessarily recognized that the named Plaintiffs and Class members suffered a common injury in fact that is redressable by this Court. Specifically, Class members suffered a concrete injury when they were subjected to an unlawful process that denied them access to the

statutorily-required IDES. The violation of a procedural right conferred by statute constitutes a concrete injury for Article III purposes. *See also Ctr. for Biological Diversity v. U.S. Mar. Admin.,* No. 4:21-cv-00132, 2023 WL 2746028, at *5–6 (E.D. Va. Mar. 31, 2023) (finding concrete harm resulting from procedural injury). Courts have repeatedly recognized standing in Rule 23(b)(2) actions challenging unlawful military disability evaluation practices. *See, e.g.*, *Torres v. Del Toro*, No. 1:21-CV-306-RCL, 2022 WL 5167371, at *4–5 (D.D.C. Oct. 5, 2022). Because the Air Force's Pre-IDES policy creates a uniform barrier to a statutory entitlement, the procedural harm is concrete, particularized, and shared by every member of the certified Class. Service members have a concrete interest in ensuring that their claims for military disability retirement are appropriately reviewed, being able to appeal an adverse decision, and being provided a PEBLO.

B. The Air Force's Pre-IDES policy constitutes a "final agency action" that is subject to judicial review.

The Class claims are not only grounded in a concrete injury, but are also ripe for judicial review. The APA commands courts to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2); *see Roe v. Dep't of Def.*, 947 F.3d 207, 220 (4th Cir. 2020), *as amended* (Jan. 14, 2020).[3]

The instant case is an administrative challenge to the legality of the Air Force's Pre-IDES screening process. It is justiciable as a review of the Air Force's conduct in developing and administering its Pre-IDES process and alleges that the policy was arbitrary and capricious, constituted an abuse of discretion, and was otherwise not in accordance with law. Class members continue to be deprived of the disability evaluation system to which they are entitled as a direct

[3] Generally, "[t]he complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force" reside exclusively in the legislative and executive branches. *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973). But this is not a request for the Court to manage military training or control the military force; it is a request for the Court to enforce the procedural mandates that Congress has placed upon the military. *See Roe*, 947 F.3d at 230, for the premise that "professional military judgments" are "subject *always* to civilian control of the Legislative and Executive Branches").

result of the Pre-IDES process' effect on their evaluation. The Class seeks the procedural remedies guaranteed by statute for the procedural harms that Class members have suffered, thereby presenting legal questions squarely within this Court's jurisdiction.

C. The Pre-IDES Process is Arbitrary and Capricious and Contrary to Law.

As a direct result of the Air Force's unlawful disability evaluation and determination of eligibility for IDES processing, Plaintiffs and the thousands of similarly situated Class members are deprived of the IDES mandated under federal law. Under 10 U.S.C. § 1071, the IDES is a uniform, statutorily defined process comprised of medical evaluation boards, physical evaluation boards, counseling of members, and mechanisms for the final disposition of disability evaluations.

Agency actions, like the Pre-IDES process, are arbitrary and capricious because "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Roe*, 947 F.3d at 220 (citation modified). Under this standard, the Air Force was required to "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Id.* When, as here, "the government violates a statutory mandate, it has definitionally failed to act in accordance with law and its action should be set aside." *Torres*, 2022 WL 5167371, at *5; *J.E.C.M. ex rel. Saravia v. Lloyd*, 352 F. Supp. 3d 559, 584 (E.D. Va. 2018) (finding government action contrary to law under APA when it was "flatly inconsistent with" agency's statutory responsibility). *See also Child. Trends, Inc. v. U.S. Dep't of Educ*., 795 F. Supp. 3d 700, 730 (D. Md. 2025) ("[W]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated …."). The arbitrary-and-capricious standard "does not reduce judicial review to a rubber stamp of agency action." *Roe*, 947 F.3d at 220 (citation modified). The APA requires that courts "exercise their independent judgment in deciding whether an agency has acted within its statutory authority." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

1. The Air Force Pre-IDES Relies On Extra-Statutory "Gatekeeping"

Congress required that IDES "apply uniformly throughout the military departments." 10 U.S.C. § 1071 (note). The statutory framework defines the IDES as beginning when a service member is identified as having a condition that may prevent reasonable performance of duties. That requirement is implemented in DoDI 1332.18 § 5.2(a), which mandates referral by competent medical authority when that threshold is met.

The Air Force does not follow that framework. Instead, it imposes a second, non-statutory screening step—the AMRO/IRILO process—before referral to the DES. That screening is implemented through DAFMAN 48-108, which requires that cases meeting "Trigger Event" criteria be routed to an AMRO and potentially processed through an IRILO rather than referred directly into the DES. DAFMAN 48-108 § 2.3.4. Nothing in 10 U.S.C. § 1071 or DoDI 1332.18 authorizes this intermediate screening process. By inserting a discretionary screening step between identification of a qualifying condition and mandatory referral, the Air Force contravenes the requirement that disability evaluation processes be uniform.

2. The Air Force Pre-IDES Violates IDES Referral Requirements

The illegality of the IDES is perhaps most evident in the Air Force's own "Trigger Event Framework." DoDI 1332.18 is unequivocal: a Service member "will be referred" into the IDES when a medical condition "may prevent the Service member from reasonably performing the duties of his or her office, grade, rank, or rating." DoDI 1332.18 § 5.2(a). The Instruction further directs that competent medical authorities make such referrals "in all cases" meeting that standard within one year of diagnosis. *Id*.

Under Air Force policy, IDES referral does not start upon identification of a condition that "may prevent" reasonable duty performance. Instead, the Air Force implements a "Trigger Event" framework, under which cases are routed for preliminary review before any referral decision is made. A "Trigger Event" includes the identification of a condition inconsistent with retention standards for continued military service. DAFMAN 48-108 § 2.3.1.1. . Those retention standards

are governed by DoDI 6130.03, Vol. 2, which defines disqualifying conditions as those that interfere with or preclude satisfactory performance of required military duties.

While the Air Force utilizes an AMRO Board as an intermediate screening step, the underlying definitions in the Pre-IDES show that the identification of a definitive diagnosis that fails retention standards under DAFMAN 48-108 § 2.3.1.1 satisfies the "may" threshold of DoDI 1332.18. The "may prevent" standard of DoDI 1332.18 is a lower evidentiary burden than the "definitive diagnosis" of retention failure required by DAFMAN 48-108 § 2.3.1.1. Because the Air Force's own Trigger Event identifies diagnoses that already preclude satisfactory performance, these individuals are statutorily entitled to immediate entry into the DES.

This departure from the governing framework is arbitrary, capricious, and contrary to law. Under DoDI 1332.18, competent medical authorities identify Service members who meet the referral criteria and refer them into the IDES "**in all cases**." The Air Force's Pre-IDES process replaces that mandatory referral requirement with a discretionary administrative screening mechanism that prevents entry into the IDES even after the regulatory threshold has been satisfied.

3. The Pre-IDES Unlawfully Replaces IDES

Once referral criteria are met, DoDI 1332.18 requires that the Service member enter the DES, including a physician-led MEB and adjudication by a PEB. Plaintiffs and Class members were diagnosed by competent medical authorities with qualifying conditions, yet instead of referral into the DES, the Air Force routed their cases to AMRO Boards and IRILO review.

Those processes culminate in "return to duty" determinations that terminate cases before entry into the IDES and without the physician-led MEB required by DoDI 1332.18. The Air Force admits that the Pre-IDES process creates a barrier to entry into the IDES. Def. Opp. at 6 [Dkt. 41]. That admission confirms that the Air Force has substituted an administrative process for the IDES.

Nothing in DoDI 1332.18 authorizes the creation of an administrative pre-screening process that interposes a non-medical office between the treating medical professionals and IDES referral. The DoDI's referral framework is straightforward: "competent medical authorities" identify Service members meeting the referral criteria and refer them into the IDES "within 1 year

of diagnosis." DoDI 1332.18 § 5.2(a). The delegation to "establish procedures" is procedural, not substantive, and does not authorize the reassignment of the referral function from competent medical authorities to administrative personnel offices or the withholding of referral once the regulatory standard is satisfied. A procedural delegation cannot override the requirement that qualifying Service members "will be referred" "in all cases."

Plaintiffs and Class members each received diagnoses from competent medical authorities that satisfied the referral standard under DoDI 1332.18, yet the Air Force routed their cases to AMRO Boards instead of referring them into the DES. By making unreviewable fitness determinations outside the DES, the Air Force undermined the review process guaranteed by statute and disregarded the framework that vests medical authorities with the responsibility to identify potentially unfitting conditions.

The record illustrates the consequences. Plaintiff Newman was returned to duty after an AMRO Board member questioned his PTSD diagnosis based on an informal discussion with a senior flight surgeon, without the benefit of a formal evaluation board or a full and fair hearing. AR at 97. Similarly, Plaintiff Watts was returned to duty despite her neurologist's concerns that her condition was unstable and at risk of causing permanent blindness. AR at 202. These determinations were made through an opaque administrative process that lacks any mechanism for independent medical review, appeal, or adversarial process.

The Air Force's policy of using AMRO Boards and AFPC/DPMNR to "filter" these cases is unlawful. It replaces the physician-led MEB process required by DoDI 1332.18 with an administrative screening mechanism that terminates cases before they enter the DES.

4. The Policy Violates Procedures Required by Law

Class referral into the IDES triggers a comprehensive, coordinated set of procedural protections mandated by statute and DoD regulation. Once referred, a service member must receive a comprehensive medical evaluation grounded in contemporaneous examinations that meet VA Compensation and Pension standards and are sufficient to determine whether the member's conditions prevent the reasonable performance of duties. DoDI 1332.18 § 4.2. That evaluation

must be conducted through a physician-led Medical Evaluation Board ("MEB"), which produces an independent Narrative Summary assessing the member's full clinical condition and duty limitations. DoDM 1332.18, Vol. 1, Encl. 3. The IDES further requires assignment of a PEBLO who provides counseling, explains the member's rights, coordinates case development, and ensures the member's participation throughout the process. DoDI 1332.18 § 3.5. Service members must also receive notice and documentation protections under the Wounded Warrior Act, including the right to review evidence, obtain medical documentation, and understand the basis of medical findings. 10 U.S.C. § 1071; DoDI 1332.18 § 3.3.

The regulatory framework further guarantees the right to a medical evaluation conducted by an impartial provider and the opportunity to submit rebuttal matters in response to MEB findings. DoDI 1332.18 §§ 3.5, 4.4. If a condition fails retention standards, the case must be referred to a PEB, which is the sole body authorized to determine fitness for continued service. DoDI 1332.18 § 4.4; DoDM 1332.18, Vol. 2 § 1.2. The PEB process includes formal adjudication with written findings that address each issue presented, as required by 10 U.S.C. § 1222, as well as the right to a formal hearing at which the service member may appear, present evidence, call witnesses, and be represented by counsel, as guaranteed by 10 U.S.C. § 1214.

The system also provides structured appellate review, including rebuttal rights and post-PEB review by an independent authority pursuant to NDAA § 524, ensuring that determinations are subject to meaningful oversight. Pub. L. No. 112-81, § 524, 125 Stat 1298 (2011). Finally, the IDES includes quality assurance and consistency review mechanisms to ensure the accuracy and uniformity of MEB and PEB determinations. DoDM 1332.18, Vol. 1, Encl. 3.

These protections implement Congress's mandate that the IDES operate as a uniform system across all military departments. 10 U.S.C. § 1071. They are not ancillary—they are the mechanism by which fitness determinations are made lawfully, based on complete medical evidence, and subject to independent review.

The Air Force's Pre-IDES process eliminates this system entirely. Instead of initiating IDES referral when required, the Air Force diverts service members into AMRO Board and IRILO

review under DAFMAN 48-108, which expressly establishes a "pre-DES screening review process" designed to determine whether a case will be allowed to enter the IDES at all. DAFMAN 48-108 § 2.3. Critically, the IRILO process is not a substitute for the DES; it is defined as "an initial review of medical records in lieu of a full medical examination," meaning that it relies on existing records rather than the comprehensive, contemporaneous evaluations required by DoDI 1332.18. DAFMAN 48-108 § 2.4. The AMRO Board may then recommend "return to duty," and AFPC/DPMNR issues a final disposition that "has the same effect and authority as a MEB," even though none of the procedures required for an MEB have occurred. DAFMAN 48-108 § 3.5.

Through this process, the Air Force makes dispositive fitness determinations while bypassing every procedural safeguard required by law. Service members never receive a physician-led MEB based on adequate medical examinations, never receive PEBLO counseling or case development, never obtain an independent medical review, never submit formal rebuttals, never appear before a PEB, and never access the formal hearing and appellate protections guaranteed by 10 U.S.C. §§ 1214, 1222. Instead, their cases are terminated through a records-based administrative screening process that lacks independent medical development, adversarial safeguards, and statutory authorization.

The result is a complete breakdown of the statutory and regulatory structure governing DES. Congress defined the IDES as a system "comprised of medical evaluation boards, physical evaluation boards, counseling of members, and mechanisms for the final disposition of disability evaluations." 10 U.S.C. § 1071 (note). The AMRO Board and AFPC/DPMNR are not part of that system, yet the Air Force substitutes those entities for the IDES itself by issuing "final" return-to-duty determinations before any MEB, PEB, or hearing occurs. The substitution is unlawful because the PEB is the sole forum authorized to determine fitness for continued military service, and the Air Force cannot replace that adjudicatory process with an administrative "gatekeeper" model.

By preventing service members from ever entering the DES, the Pre-IDES process violates DoDI 1332.18, contravenes the statutory framework established by Congress, and undermines the uniformity mandate of 10 U.S.C. § 1071 note. The Air Force's admitted systemic administrative

failures, such as the lack of centralized records and database crashes, render its procedural conduct indefensible. *See* ECF 41-1, ¶¶ 5-6. An agency action cannot satisfy the "observance of procedure required by law" standard when its own internal record-keeping is so fundamentally broken that it cannot reliably track the individuals subject to those procedures. These administrative failures amount to separate violations of the agency's paperwork and document access requirements under DoDI 1332.18. *See* DoDI 1332.18 § 3.3(c)(5) (allowing a service member to all records and evidence the PEB had received); § 4.3 (among other things, allowing service members' and their counsel access to "all documentation pertaining to their disability case").

In sum, the Pre-IDES does not merely omit individual procedural steps—it prevents the entire IDES process, and every protection that defines it, from ever attaching. By making final fitness determinations outside the IDES while denying service members access to counsel, medical evaluation, independent review, formal adjudication, and appellate rights, the Air Force acts without observance of procedure required by law.

D. The Policy Violates Procedural Due Process.

The APA requires this Court to set aside agency actions found to be "contrary to constitutional right, power, privilege, or immunity." The Due Process Clause of the Fifth Amendment requires that the federal government provide procedural safeguards when depriving a person of a protected property interest. Potential eligibility for disability retirement benefits under 10 U.S.C. § 1201 constitutes such a property interest because these benefits are statutorily mandated and nondiscretionary. *Kelly v. United States*, 69 F.4th 887, 900 (Fed. Cir. 2023).

At a minimum, due process requires notice, the right to counsel, and a meaningful opportunity to be heard before a final deprivation occurs. In this context, Congress established the IDES as the process through which those protections are provided, including physician-led medical evaluation, adjudication of fitness, and access to free military legal counsel, comprehensive medical evaluations, and the right to a "full and fair hearing" before a PEB. Additionally, service members must be afforded the right to a formal appeal and an impartial hearing regarding any determination of fitness for duty. 10 U.S.C. § 1071.

The Air Force's Pre-IDES process eliminates that constitutional safeguard. Rather than permitting service members to proceed through the IDES and obtain a determination through the statutorily prescribed process, the Air Force diverts them into AMRO Board and AFPC/DPMNR review, which culminates in "return to duty" determinations that function as final fitness decisions. Those determinations are made before any MEB, before any PEB adjudication, and without any opportunity for the service member to participate in a formal proceeding, present evidence, obtain independent review, or challenge the outcome.

While the IDES guarantees access to free military counsel at all stages to protect a member's interest, the Air Force's Pre-IDES process provides no such right and service members are forced to navigate the AMRO Board review without legal representation. While the IDES requires comprehensive requires comprehensive medical evaluation sufficient to assess the full extent of a member's functional limitation, the Pre-IDES process relies on limited IRILO packages consisting of pre-existing records. And while the IDES requires adjudication by an impartial board subject to hearing and appeal, the AFPC/DPMNR instead acts as the final arbiter of fitness, issuing binding determinations without any hearing, without any impartial review, and without any avenue for appeal. In practical effect, the Air Force adjudicates fitness—and thereby forecloses eligibility for disability retirement benefits—without providing any meaningful opportunity to be heard.

Because the Pre-IDES process results in final fitness determinations while denying service members the notice, participation, and review required by both statute and the Constitution, it violates procedural due process.

E. The Government's Cherry-Picked Examples Are Unavailing.

In a transparent attempt to justify its extra-statutory gatekeeping mechanism, Defendant has supplemented the Administrative Record with four purportedly "illustrative" examples: SrA A.R., Amn L.P., TSgt S.S., and TSgt N.W. These cases involve service members who were denied IDES processing due to pending misconduct discharges or an approaching retirement. *See* Defendant's Supplemental Administrative Record ("Supp. AR") at 3, 5, 10, 19. These examples do not establish the validity of the Pre-IDES process. Instead, they demonstrate that the Air Force

is using individual examples to justify a system that systematically strips the entire Class of its statutory rights.

The supplemental cases are distractions from the unlawful nature of the Pre-IDES, as federal law and Department of Defense regulations already provide a comprehensive framework for handling service members facing both a disability evaluation and a disciplinary action. Under DoDI 1332.18, Paragraph 5.4, the service members in misconduct proceedings are either completely ineligible for IDES referral (for certain, more serious misconduct) or progress to a specified point in the IDES process before the separation authority must decide whether to separate them for misconduct or permit them to complete IDES processing.

Every other branch of the military manages these scenarios using existing regulations without resorting to an unlawful Pre-IDES gate-keeping process. *See* Army Reg. 635-200, ¶¶ 1–34; SECNAV Memo, *Disability Evaluation System Dual Processing* (June 1, 2016); MARCORSEPMAN 1900.16-4107. The Air Force's own dual processing regulations already provide a framework for addressing the service members in the supplemental record who had misconduct violations, without any reference to the Pre-IDES process. *See* AFI 36-3211 (2022), Section 8D. "Amn L.P.," who received a bad conduct discharge, would already have been ineligible for the IDES entirely under DODI 1332.18 due to Amn L.P.'s approved punitive discharge not falling under any exception created by AFI 36-3211. Supp. AR at 7. "SrA A.R." and "TSgt S.S.," who appear to have received involuntary administrative discharges for misconduct, should simply be processed according to the dual processing regulations of AFI 36-3211. Supp. AR at 3, 10. The other branches all manage to adjudicate individual circumstances like those in these four cherry-picked cases without an unlawful Pre-IDES process.

Defendant's examples also fail to grapple with the fact that the Pre-IDES process is an unlawful, non-uniform barrier to the "full and fair hearing" guaranteed to service members by Congress. The Air Force is attempting to use a handful of cases where IDES processing might have been "inappropriate" to justify a system that blocks *all* Airmen from accessing their statutory rights, including the named Plaintiffs who retired before receiving access to the IDES and who

have no misconduct violations. Because the Army, Navy, and Marine Corps handle misconduct and longevity retirements through the standard IDES and dual processing regulations, any Air Force claim that it *needs* the Pre-IDES process to manage these situations is fiction.

Moreover, the Defendant's examples are not a barrier to class-wide relief on summary judgment—Defendant assumes that the Class is seeking a particular outcome following the IDES process. Class members do not seek a predetermined substantive outcome—separation, retirement, or retention. Instead, they seek enforcement of the statutorily mandated process to which they and all class members were entitled. At issue is not the outcome of being separated from duty or returned to duty, but the procedural right to be afforded the IDES process to which they are entitled.

The decisions in *Springs v. Del Toro*, No. 20-3244 (RDM), 2023 WL 8190859 (D.D.C. Nov. 27, 2023), and *Torres v. Del Toro*, 2022 WL 5167371 (D.D.C. Sept. 27, 2022), are instructive. In both cases, the court granted summary judgment on behalf of certified Rule 23(b)(2) classes of service members challenging a practice that depressed disability ratings. In both cases, each court acknowledged the possibility that "some class members may not wish to have their disability ratings recalculated," but held that such concerns did not defeat adequacy or Rule 23(b)(2) cohesiveness; they were "likely to be rare and can, in any event, be addressed at the remedial stage." *Springs v. Del Toro*, No. 20-3244 (RDM), 2022 WL 741865 (Mar. 11, 2022). That is precisely the posture here: even if a minority would prefer to keep an existing disposition, that preference relates to remedial implementation. As in *Springs* and *Torres*, the Court can set aside the existing determinations for affected Class members and order the government to craft remedial processes to address the procedural injuries Class members suffered. *See Torres*, 2022 WL 5167371, at *23.

IV. CONCLUSION

Our nation's Air Force veterans and service members are entitled to each and every one of the procedural rights guaranteed by federal law and DOD regulations. The Air Force's Pre-IDES screening process is arbitrary, capricious, and contrary to the statutory and regulatory mandates for a uniform disability evaluation system.

Respectfully submitted this 8th day of May 2026.

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