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, in his official capacity, Defendant.	Civil Action No. 1:25-cv-1093-MSN-IDD

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

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I. INTRODUCTION

Like the other members of this Class, Plaintiffs Kathleen Watts, Robert Newman, and Ryan Miller honorably completed their Air Force service, earning distinctions and awards throughout their service. When they became unfit to serve due to medical conditions, the Air Force unlawfully implemented a pre-screening system that contravened the statutorily-mandated Integrated Disability Evaluation System ("IDES") process to evaluate these conditions.

Instead of providing the IDES' standardized examinations, impartial medical review, access to counsel, and appeal rights guaranteed under federal law, the Air Force relied on a paper-based return-to-duty decision from the Aerospace Medicine Review Optimization ("AMRO") Board and the Air Force Personnel Center's Medical Retention Standards Office ("AFPC/DP2NP"). This process disregarded plain evidence from service members' treating physicians and failed to consider the full scope of their disabling conditions. As a result, Plaintiffs—and other members of the Class—were deprived of their ability to qualify for military medical retirement, including ongoing health care coverage for themselves and their families. The experiences of Plaintiffs Ms. Watts, Mr. Miller, and Mr. Newman are not isolated; they reflect a systemic practice that has affected hundreds of Air Force service members since at least 2019. Today, Plaintiffs advocate for the hundreds of similarly situated Airmen who were denied appropriate review of their disabling conditions under the Air Force's unlawful policy.

The proposed Class satisfies each of the requirements set forth in Federal Rule of Civil Procedure 23(a). First, there are hundreds of people in the Proposed Class, and Class members are identifiable using records maintained in the ordinary course of business by the Air Force. Second, a common question of law and fact exists as to all members of the proposed Class, namely whether the Air Force's failure to provide the uniform, rights-protective IDES process to all service members flagged for failing retention standards is and was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and without observance of procedures required

by law. Third, Plaintiffs' claims are typical of those of the Proposed Class, as Plaintiffs and other Class members were subject to same unlawful policy and denied military disability retirement as a result. Fourth, Plaintiffs and undersigned counsel will adequately represent the Class and are prepared to vigorously prosecute this action on behalf of the Class.

On behalf of hundreds of similarly situated Airmen, Plaintiffs respectfully request certification of the Proposed Class so that these service members can obtain the review and protections to which they are legally entitled.

II. FACTUAL BACKGROUND

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

1. The IDES is a federal statutory requirement.

When service members such as Kathleen Watts, Robert Newman, and Ryan Miller develop a physical or mental disability that may prevent them from performing their military duties, federal law governs the process by which their fitness for duty and entitlement to disability retirement are determined. Federal statutes under Chapter 61 of Title 10 authorize separation or retirement for physical disability when a service member is unfit to perform the duties of office, grade, rank, or rating. *See* Compl. ¶ 16; 10 U.S.C. § 1201. To ensure fairness and consistency, Congress requires a uniform, rights-protective IDES across the services. *Id.* ¶ 15. Sections 1201 through 1222 of Title 10 of the United States Code establish the statutory framework for the Department of Defense's uniform disability-evaluation system, including the Medical Evaluation Board ("MEB"), Physical Evaluation Board ("PEB"), counseling, impartial medical review, standardized examinations, and mechanisms for final disposition, together with notice, access to counsel, and appeal rights.[1] Compl. ¶¶ 24-27. Federal law requires branches of the military—including the Air Force—to implement this uniform IDES process.

[1] *See* 10 U.S.C. § 1216a (requirements and limitations on determinations of disability); 10 U.S.C. § 1222 (physical evaluation boards).

As such, the IDES process is not optional. Federal law requires all branches to implement the IDES, and the Department of Defense enforces that mandate through Department of Defense Instruction ("DoDI") 1332.18 and Department of Defense Manual ("DoDM") 1332.18, which prescribe overarching minimum standards and procedures to which all service branches and their branch-specific issuances must conform. Each branch of the military, in turn, issues its own regulations outlining the procedures for evaluating and adjudicating disability claims; for the Air Force, these procedures are outlined in the Air Force Instructions ("AFI"), specifically AFI 36-3212.[2]

2. Federal law and agency standards set out how the IDES is supposed to work.

The military IDES process is a multi-stage statutory system designed to ensure uniform and fair evaluation of service members with potentially unfitting medical conditions. It begins with a referral. Referral into the IDES is mandatory when an authorized Department of Defense medical authority determines that a member may have a permanently unfitting condition that fails medical retention standard.[3]

Under DoDI 1332.18, referral is required when "the course of further recovery is relatively predictable or within one year of diagnosis, whichever is sooner," and the member has a medical condition that: (1) may, alone or in combination, prevent the member from "reasonably performing the duties of their office, grade, rank, or rating"; (2) "represents an obvious medical risk to the health" of the member or others; or (3) "imposes unreasonable requirements on the military to maintain or protect" the member.[4] In all cases, competent medical authorities must refer Service

[2] *See Keltner v. United States*, 165 Fed. Cl. 484, 488-89 (2023).
[3] *See* DoDM 1332.18, § 4.2 (stating "[a]n authorized qualified DoD medical care provider, must ... refer the Service member to the IDES process"); DoDI 1332.18, § 3.2(d), § 5.2.
[4] DoDI 1332.18, § 5.2(a)(1)–(3).

members meeting these criteria into the IDES within one year of diagnosis.[5] Importantly, a service member cannot self-refer to IDES.[6]

Once a service member is referred to IDES for disability evaluations, the service member must receive a standardized examination for their referred condition(s) and all other conditions the service member chooses to claim. After this step, an MEB, which consists of a body of physicians, is convened to evaluate the service member's disability.[7] The MEB delves into the service member's full clinical history, compiling its findings into a comprehensive Narrative Summary ("NARSUM") that tells the story of the service member's health and service. The MEB process is federally mandated to include rights to counsel, access to an impartial medical review, and the opportunity to challenge or appeal the MEB's findings.[8] These protections are in place to safeguard the interests of every service member as they navigate this critical stage of their military career. When the MEB determines that a service member may no longer able to carry out the duties of their office, grade, rank, or rating, the process moves to the next important step: referral to the PEB.[9] The PEB is the sole authority responsible for determining if a service member is fit for continued military service based on their physical or mental disability.[10] If the PEB finds that the service member is unfit for continued military service, it must assign a disability rating from 0% to 100%, in increments of 10%, to each physical or mental condition found by the PEB to render the service member unfit for continued military service. When more than one condition is involved, the PEB combines the ratings to produce a single "combined disability rating." This rating is more than just a number—it determines the benefits and support the service member will

[5] DoDI 1332.18, § 5.2(a)(1)–(3).
[6] *See* DoDI 1332.18, Glossary.
[7] Dep't of Defense, Medical Evaluation Board, https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/DES/Medical-Evaluation [https://perma.cc/U5JH-FT33].
[8] *See* DoDI 1332.18; DoDM 1332.18, Vol. 2; 10 U.S.C. § 1216a.
[9] *See* DoDI 1332.18, Enclosure 3, § 2(d).
[10] *See* DoDI 1332.18; 10 U.S.C. § 1222 (physical evaluation board).

receive after discharge. A combined disability rating of 30% or higher means the service member is medically "retired," granting them ongoing medical care and commissary privileges for themselves and their family. *See* 10 U.S.C. § 1203. On the other hand, a rating between 0% and 20% results in medical "separation," which provides a one-time lump sum disability severance payment, but does not include continued medical care or commissary privileges. *See* 10 U.S.C. § 1212. This process, while complex, is designed to ensure that every service member receives a fair evaluation and the support they need as they transition to the next phase of their life.

B. The Air Force's unlawful pre-IDES process prevents service members from accessing the military disability system and circumvents the appeal process.

Air Force service members are subject to a pre-IDES process that deprives them from the IDES' procedural protections. Like the federally mandated IDES, the Air Force's Pre-IDES process begins with a "Trigger Event"—a moment when a medical or mental health condition is identified that does not meet the standards for continued service.[11]Under DoDI 1332.18 § 5.2(a), that moment is precisely when referral into the IDES becomes mandatory: when a condition "(1) may, singularly, collectively, or through combined effect, prevent the Service member from reasonably performing the duties of their office, grade, rank, or rating; (2) represents an obvious medical risk to the health of the member or to the health or safety of other members; or (3) imposes unreasonable requirements on the military to maintain or protect the Service member."[12] The regulation further directs that competent medical authorities must refer such members into the IDES within one year of diagnosis.[13]

The Air Force's own governing instruction, Department of the Air Force Manual ("DAFMAN") 48-108 § 2.2.2, concedes this fact, stating that "in order to minimize inappropriate referrals, there is a two-step DES pre-screening process for all potential MEB cases."[14] By

[11] DAFMAN 48-108, ¶ 2.3.
[12] DoDI 1332.18, § 5.2(a)(1)–(3).
[13] *Id*. ¶ 5.2(b).
[14] DAFMAN 48-108, ¶ 2.2.2.

definition, "potential MEB cases" are those that meet the threshold for medical evaluation under DoDI 1332.18 § 5.2(a)—that is, members whose conditions may prevent reasonable performance, pose an ongoing medical or safety risk, impose unreasonable burdens on the military, or have remained duty-limiting for twelve months or more. Section 2.4 of the same manual further confirms this overlap, requiring an "Initial Review-In-Lieu-Of (IRILO)" whenever an Airman "ha[s] a condition that may render them unfit for continued military service … or [is] unable to deploy[.]"[15] The manual makes clear that an IRILO is triggered by "a duty-limiting condition which has resulted or likely will result in a mobility restriction for 365 days or longer," and that once an IRILO case is identified, the member must be notified they are being referred for a potential MEB.[16]

DAFMAN 48-108 § 1.2.4.3 further reinforces that AMRO Boards are required to apply the same retention standards that govern mandatory referral under DoDI 1332.18. It directs that AMRO Boards "utilize retention standards as outlined in DoDI 6130.03 Vol. 2, DAFMAN 48-123, and the Medical Standards Directory (MSD)" when making retention determinations, and that referring providers must identify the specific standard that triggered review and provide the service member with the name and contact information of the assigned PEBLO.[17] These provisions confirm that AMRO and IRILO reviews evaluate members under the same medical and legal standards that already compel IDES referral, but without providing the procedural safeguards IDES requires.

Thus, the Air Force's own instructions acknowledge that the Pre-IDES process covers the very population that Congress and the Department of Defense have already determined must be referred into the formal IDES. However, rather than complying with this mandatory referral

[15] *Id.* ¶ 2.4.
[16] *Id.* ("Airman [sic] who have conditions that may render them unfit … or are found to be unable to deploy must undergo an IRILO.").
[17] *Id.* ¶ 1.2.4.3 (requiring AMRO Boards to use DoDI 6130.03 Vol. 2, DAFMAN 48-123, and MSD standards and to provide PEBLO contact information); *id.* ¶ 2.3.2.

requirement, the Air Force has created a parallel, non-statutory screening system. After a Trigger Event, service members are first routed to an Aerospace Medicine Readiness Optimization ("AMRO") Board, a preliminary panel that conducts an "in-lieu-of" review before any referral to the IDES. This detour is unlawful because the very cases that trigger AMRO or IRILO review, definitive diagnoses that fail retention standards, long-standing duty-limiting profiles exceeding 300 days, and medical conditions that result in cancelled deployments or commander concerns grounded in a diagnosed condition—already satisfy the mandatory referral criteria under DoDI 1332.18. Once a service member's condition has persisted for twelve months or is otherwise inconsistent with retention standards, DoDI 1332.18 § 5.2(b) leaves no discretion: competent medical authorities are required to refer the member into the IDES.[18]

By inserting this "two-step" pre-screening process between the Trigger Event and the statutory referral, the Air Force has substituted administrative triage for the congressionally authorized disability evaluation process. This Pre-IDES system unlawfully withholds IDES referral from service members whose conditions have already met DoDI 1332.18's objective criteria, thereby denying them standardized medical examinations, impartial medical review, access to counsel, and the right to appeal—protections Congress and the Department of Defense specifically designed to ensure fairness and uniformity across the services. The steps of the Air Force Pre-IDES process.

a. Step one: The AMRO Board.

As the first Pre-IDES step, the AMRO Board is provided with the service member's records to include, among other things, the service member's treatment notes and the latest duty-limiting physical profile, known as the AF Form 469. At the AMRO stage, a small medical team reviews these records to decide if the service member should be returned to duty or assigned a code—

[18] DoDI 1332.18, § 5.2(b).

Assignment Availability Code ("AAC") 37—that indicates a potential pending MEB/PEB review.[19]

Unlike the IDES, there is no standardized exam ordered at the AMRO Board stage, no impartial medical reviewer assigned, and no legal briefing about rights. The member does not receive the uniform counseling IDES guarantees. Rather, the only "safeguards" are that the AMRO Boards are required to "utilize retention standards as outlined in DoDI 6130.03, vol. 2, Medical Standards for Military Service: Retention, DAFMAN 48-123, Medical Examinations and Standards, and its accompanying MSD, for retention standards determinations."[20]

b. Step two: Initial Review In Lieu Of.

At the second step of the Air Force Pre-IDES process begins, the AMRO recommends Initial Review In Lieu Of ("IRILO"). The IRILO file includes a service member's then-existing medical records and a commander's statement, rather than the comprehensive examinations and rights-bearing procedures that would normally follow an IDES referral. During this second step of the Pre-IDES process, the AMRO Board uses this IRILO file to either recommend the service member into IDES or that the service member be returned to duty within 30 days.[21]

Under DAFMAN 48-108 § 2.4, an IRILO must be initiated whenever an Airman has "a condition that may render them unfit for continued military service" or "a duty-limiting condition which has resulted or likely will result in a mobility restriction for 365 days or longer." Those criteria are identical to the mandatory referral standards in DoDI 1332.18 § 5.2(a)—the very conditions that require entry into the IDES. Yet instead of ensuring referral, the IRILO process functions as a screening mechanism to avoid it.

Within thirty days, the AMRO Board reviews the IRILO package and issues one of two recommendations: (1) referral for an MEB because the member's condition may preclude

[19] *See* DAFMAN 48-108, ¶ 2.4.
[20] *See id.* ¶ 2.3.4.2.
[21] *See id.* ¶ 2.4.2, ¶ 2.4.3.

reasonable performance of duties, or (2) "return to duty," thereby terminating the case without ever entering the IDES.[22] In practice, this second option enables summary dismissal of qualifying disability cases without the standardized examinations, impartial review, or rights to counsel and appeal that federal law guarantees. The IRILO thus serves as a procedural substitute for—rather than an entry into—the statutory disability evaluation system.

c. Step three: Final determination regarding IDES referral.

The AMRO Board's recommendation, however, still does trigger a service member's entrance into the IDES. Instead, the AMRO Board's decision is sent for consideration to the Air Force Personnel Center's Medical Retention Standards Office ("AFPC/DP2NP") or equivalent Surgeon General's Office ("ARC equivalent SG's office") – for reservists.[23] The AFPC/DP2NP or ARC equivalent SG's office determine whether a service member will be referred into the IDES or "returned to duty."[24]

Air Force regulations assert that this decision carries the same effect and authority as a MEB finding.[25] However, the Pre-IDES is an unlawful substitution for the statutory MEB process. Under DoDI 1332.18, entry into the MEB triggers a series of mandatory procedural protections: standardized medical examinations, preparation of a complete NARSUM, impartial medical review, written notice to the member, and the right to respond before any recommendation is finalized.[26]

The Pre-IDES process denies those rights. AFPC/DP2NP's "return-to-duty" dispositions (§ 3.1.1.2.1) function as final screening decisions that terminate medical evaluation altogether, yet are treated as having the same legal effect as an MEB finding. Members who meet DoDI 1332.18 § 5.2(a) criteria are therefore screened out before receiving the procedural protections guaranteed

[22] *Id.* ¶ 2.4.3.1.
[23] *See* DAFMAN 48-108, ¶ 2.4.4; *id.* ¶ 3.1.1.2.
[24] *Id.* ¶ 2.4.4; ¶¶ 3.1.1.1–3.1.1.2.
[25] *Id.* 48-108, ¶ 3.1.1.2.
[26] DoDI 1332.18, Encl. 3 § 3; DoDM 1332.18, Vol. 1 §§ 3.3–3.4.

in formal MEB processing. This delegation contravenes DoDI 1332.18 *and* DoDM 1332.18, Vol. 1 § 3.2(c)*, which* reserve retention-standard findings to the MEB. The Pre-IDES regime therefore denies service members the uniform safeguards Congress and DoD require.

2. Airmen lack appeal rights in the Pre-IDES process.

While AFPC/DP2NP or ARC equivalent SG's office determinations are final, many service members will attempt an unofficial appeal via letter or via their physician and/or congressman. Unlike appeals submitted as part of the IDES process, the Pre-IDES pathway offers no guaranteed venue for rebuttal, no impartial hearing, and no reasoned decision on appeal, as no further explanation or response is required by the Air Force.

In effect, if a return-to-duty decision is made by the AFPC/DP2NP or SG, despite the fact that the service member may continue to have assignment limitations, deployment waivers, or permanent profile restrictions, the implicit message that the case is closed. When the answer is "returned to duty," there is no meaningful way to contest the outcome—even when treating specialists warn of serious, ongoing limitations.

3. Procedural failures in the Air Force Pre-IDES Screening Process.

The Air Force Pre-IDES suffers from at least three procedural unlawful deficiencies compared to the statutorily-required IDES.

First, it violates the statutory mandate that medical evaluations and physical disability evaluations of recovering service members apply uniformly across the military departments and include specified components.[27] The Pre-IDES diverts members with conditions failing retention standards away from that uniform system.

Second, it denies threshold protections guaranteed upon IDES referral, including clear notice of referral, access to free military counsel at all stages, standardized examinations, an

[27] *See* 10 U.S.C. § 1216a.1

impartial review independent of MEB, and the right to submit and obtain adjudication of an MEB rebuttal before issuing a disposition that functions as a fitness decision.[28]

Third, it lacks the external quality assurance reviews DoD requires to monitor accuracy and consistency of MEBs and PEBs, leaving outcomes opaque, unreviewed, and inconsistent with the transparency Congress demanded.[29]

C. The unlawful Air Force Pre-IDES policy denied service members like Plaintiffs from standardized disability evaluations and procedural protections.

The Air Force's Pre-IDES screening policy has affected thousands of service members across installations and commands since at least 2019. *See* Compl. ¶ 129. The Pre-IDES process applies to all Air Force service members and diverts significantly from IDES and its procedural protections.

The experiences of Plaintiffs Kathleen Watts, Robert Newman, and Ryan Miller exemplify how the Air Force's pre-IDES policy foreclosed meaningful review or reconsideration, even in the face of substantial evidence of continued impairment. Each Plaintiff was flagged for failing retention standards, routed through AMRO and IRILO, and then returned to duty by AFPC/DP2NP with duty restrictions, yet without the uniform exams, counsel, impartial review, MEB/PEB access, or appeal that IDES guarantees. Their stories, set out next, demonstrate how the Air Force's pre-IDES policy produces the same unlawful result on a class-wide basis across diagnoses and duty stations.

1. Plaintiff Kathleen Watts.

Ms. Watts served 12 years in the Air Force as an Orthopedic Physician Assistant. *See* Compl. ¶ 63. She spent her career treating Airmen with orthopedic injuries and helping them navigate the very disability rules the Air Force promised would apply uniformly. In early 2023, the roles reversed when Ms. Watts began experiencing unexplained numbness, visual changes, and

[28] *See generally* DoDI 1332.18, § 4.
[29] *See* DoDI 1332.18.

headaches. *Id.* ¶ 64; *see* Defendant's Administrative Record ("AR") at 147. An optometry visit revealed papilledema and imaging confirmed cerebral venous thrombosis ("CVT"). *Id.* ¶¶ 65-66. CVT occurs when a blood clot in the brain's venous sinuses prevents blood from draining out of the brain. As a result, pressure builds up in the blood vessels, which may lead to swelling and bleeding in the brain.[30]

From that point forward, ordinary days became a careful calculation for Ms. Watts. Treating physicians started Ms. Watts on medication, which allowed for mild improvement; however, she continued to have diagnosed migraines and worsening intracranial pressure. AR at 147. Her physicians documented duty-limiting migraines several times a week, mobility restrictions, and unstable intracranial pressures—exactly the kind of findings that do not meet retention standards. Compl. ¶ 71; AR at 153, 183. Due to these chronic migraines, continued abnormal intracranial pressures, and the need for lifelong anticoagulation, Ms. Watts was placed on medical hold. Despite a Trigger Event and a record that should have gone into the IDES process, Ms. Watts was routed through the Air Force's Pre-IDES process. Compl. ¶ 68.

At work, Ms. Watts missed days, departed early, and spent hours in dark rooms during prostrating headaches. Compl. ¶ 77; AR at 137. Her treating physician noted Ms. Watts needed specialty care in neurology and hematology, frequent monitoring, and lifelong anticoagulation. Compl. ¶ 80; AR at 134, 202, 232. Despite this, Ms. Watts' Commander's Statement focused on historical data, prior to her CVT, and "indicated she could perform all her in-garrison duties without the need for workarounds, limitations, schedule modifications, or restrictions." Compl. ¶ 72; AR at 161. Moreover, her commander indicated he did not consult with Ms. Watts' physician, because the "impact of the member's condition seems self-evident." Compl. ¶ 76. Despite not

[30] *Cerebral Venous Sinus Thrombosis*, JOHNS HOPKINS MEDICINE, https://www.hopkinsmedicine.org/health/conditions-and-diseases/cerebral-venous-sinus-thrombosis [https://perma.cc/2ZWH-JBJV].

conferring with her treating physician, Ms. Watts' commander concluded that Ms. Watts should be retained. *Id.*

Based on the papers alone, the AMRO recommended and AFPC/DP2NP affirmed, a return-to-duty disposition. This was despite the fact that IRILO reviewers acknowledged that her CVT and associated migraines would not improve enough in the next 12 months for her to perform all duties of her office, grade, rank, or rating. Compl. ¶ 68; AR at 136.

The final determination of the AFPC/DP2NP was issued without standardized examinations, without an impartial medical review, without access to counsel, and without any MEB or PEB or appeal. Compl. ¶ 78; AR at 127.

With very few options available to her, Ms. Watts submitted an informal appeal of the Pre-IDES determination, obtaining a letter from her neurologist and hematologist who wrote to explain her persistent, disabling headaches, the continuing need for specialty care, and the risk of permanent vision loss. Compl. ¶ 80; AR at 183, 232. The response was a return of her case "without action" and a request to her medical facility asking for a statement addressing any restrictions to Ms. Watts' hospital privileges—that is Ms. Watts' ability to practice in association with a hospital—to which the Chief Medical Staff "wrote that Ms. Watts had no restrictions in her hospital privileges." Compl. ¶ 85; AR at 213, 216.

The AMRO Board at no point inquired whether Ms. Watts's intracranial hypertension, papilledema, and severe migraines may prevent her from performing her required duties. Shortly after, the AFPC/DP2NP upheld the disposition, and the symptoms continued to get worse. Compl. ¶ 82; AR at 215-16.

Ms. Watts' condition was severe enough for her treating physician to call the Air Force Personnel Center twice to express his concerns, and he was informed that active duty service members "are ineligible for an MEB when their credentialing is unaffected." Compl. ¶ 90. Her

physician also contacted the IRILO, who informed him that Ms. Watts would be "taken care of by the VA" and that the Air Force did "not need to use any more resources on her." *Id.* ¶ 91.

At this time, Ms. Watts retained a private attorney to attempt to appeal her disposition, but that process was not successful. AR at 176. In the end, Ms. Watts never entered IDES. She separated without the disability evaluation process Congress guaranteed, carrying the same symptoms and risks that first triggered referral—but none of the procedural protections the uniform IDES process is designed to provide. *See* AR at 125.

2. Plaintiff Ryan Miller.

Mr. Miller served as an Aircraft Structural Maintenance Craftsman in the U.S. Air Force Reserves. *See* Compl. ¶ 93. His job was hands-on and physical: bending and stooping inside fuselages, lifting and carrying equipment, and working long days on the flight line. In 2016, his back pain began while deployed. *Id.* ¶ 94; AR at 20. Over time, shoulder and neck pain followed. Imaging confirmed bulging discs and a left scoliotic curve of the spine, right shoulder/left ilium elevated, and lumbar lordosis consistent with his symptoms. Compl. ¶ 94; AR at 5. By 2022, despite ongoing treatment, his profile reflected what he already knew—his duties and his body were in conflict. Compl. ¶ 95; AR at 7. Due to his severe pain, he was restricted him from bending, stooping, crawling, lifting more than 40 pounds, prolonged standing, unit physical training, and multiple components of the fitness test. Compl. ¶ 97; AR at 7. Following the implementation of these restrictions, "Mr. Miller spent the next seven months corresponding with his [supervisor] regarding the possibility of IDES processing." Compl. ¶ 98.

Under DoDI 1332.18, § 5.2(a), medical authorities must refer a service member into the IDES when a condition "may, singularly, collectively, or through combined effect, prevent the Service member from reasonably performing the duties of their office, grade, rank, or rating," when it "represents an obvious medical risk to the health of the member or others," or when it "imposes unreasonable requirements on the military to maintain or protect the Service member."

Mr. Miller's condition met all three criteria: his chronic spinal and shoulder conditions prevented reasonable performance of his core duties, presented ongoing health risks, and imposed persistent restrictions incompatible with the operational demands of his specialty.

Instead of initiating a mandatory referral to the IDES, Mr. Miller's case was routed through the Air Force's AMRO process. When the AMRO finally convened to review Mr. Miller's case, the board indicated they did not "see anything that would stop [Mr. Miller] from being retained" and requested more documentation, which Mr. Miller did not have since he had not been subject to the standardized examinations that normally would come with an IDES. Compl. ¶ 101; AR at 3. Mr. Miller, being a reservist, submitted all records in his possession and would not have had access to new evidence as he was not in IDES. As a result, his review was put on hold. Compl. ¶ 102. After another month, and without a command statement, the AMRO issued its decision that Mr. Miller should be returned to duty with extensive assignment limitations. *Id.* ¶ 105; AR at 3. Unlike the IDES process, Mr. Miller received no standard examinations, no impartial review, no counsel, no MEB, no PEB and no appeal.

For the next few months, Mr. Miller worked with a private attorney in an attempt to preserve his rights and informally appeal the AMRO decision. Compl. ¶ 108. He wrote letters to his congressman, sought assistance, and stayed off drill while awaiting review. *Id.* Months later, he learned there had been no appeal at all, despite being told by his supervisor that an appeal was in the works and that Mr. Miller's enlistment "would likely be extended for due process." *Id.* ¶ 110. By then, Mr. Miller did not have the opportunity to submit additional documentation or to have his case re-reviewed by the AMRO Board, because in November 2023, he was removed from active duty and transferred to the Individual Ready Reserve, where he is ineligible for IDES processing. *Id.* ¶ 113. The Air Force's Pre-IDES process had reached a return-to-duty disposition that operated as the last word on fitness for the very conditions that triggered referral to IDES. Because the Air Force made that decision outside of IDES, Mr. Miller never received standardized

VA-quality examinations, never had an impartial medical review, never had government-supplied counsel, and never had access to an MEB or PEB where he could be heard, and lacked appeal rights.

3. Plaintiff Robert Newman

Mr. Newman served as an airborne cryptologic language analyst. *See* Compl. ¶ 114; *see also* AR at 96. His career was built around flying missions that depend on calm judgment at altitude. Compl. ¶ 115. In 2017, during a deployment, a traumatic flight left him convinced he would die. *Id*. ¶ 116; AR at 101, 117. Initially, it did not limit his duty-performance because post-deployment he served in a position that did not require him to fly; however, when told that he would return to flying status, he began having anxiety symptoms. Compl. ¶ 116-17; AR at 101, 117. He reported his symptoms, was placed in Duties Not Including Flying ("DNIF") status, and remained grounded for over a year. His DNIF status for over a year resulted in a referral for a fitness for duty evaluation. Compl. ¶¶ 118-19; AR at 104.

The IRILO record included an impact statement from his Company Commander indicating that Mr. Newman "had [a] significant in-flight event that led to severe anxiety associated with his flight duties." Compl. ¶ 120; AR at 100. His NARSUM documented symptoms consistent with Post-Traumatic Stress Disorder ("PTSD"). Compl. ¶ 123; AR at 101. Among other things, he experienced avoidance of thinking about past traumas, emotional and physical reactions when exposed to cues of trauma, and problems with going to sleep and staying asleep, with his records noting that "even if I feel tired, I just won't be able to go to sleep easy ... nightmares ... flashbacks ... cognitive distortions." Compl. ¶ 123. The evaluating physician concluded even with treatment he would not return to flying in the next three years. Compl. ¶ 124; AR at 105.

Yet, routed through the Air Force's Pre-IDES process rather than IDES, Mr. Newman's case turned on an internal conversation that diagnosed Mr. Newman with a fear of flying rather than a trauma issue. Compl. ¶ 125; AR at 97. The AMRO returned him to duty with assignment

limitation codes. Compl. ¶ 125; AR at 96. Mr. Newman did not have the benefits of the IDES' procedural protections, such as standardized examinations, impartial review, access to counsel, MEB or PEB, and appeal rights. Instead, Mr. Newman continued to seek mental health care and completed his service, separating months later—never having received process Congress required for Airmen whose fitness has been called into question. Compl. ¶ 127.

III. ARGUMENT

A. The Proposed Class definition.

As described in the Complaint, service members Kathleen Watts, Robert Newman, and Ryan Miller seek certification of a class of all veterans of the United States Air Force who were identified as having a Trigger Event by a medical authority but were denied access to IDES due to the Air Force's Pre-IDES process, which has been in place since at least 2019 and continuing to present. Specifically, the named Plaintiffs aim to represent a class defined as follows (the "Proposed Class"):[31]

> All current and former members of the United States Air Force, including the Air Force Reserve and Air National Guard, who, from January 1, 2019, to the present, were identified by an Air Force medical authority as having one or more medical conditions that did not meet retention standards, remained duty-limited for twelve months or more, or were prohibited from deployment or permanent change of station ("PCS") due to the risk or burden of a medical condition, and who were referred into the Air Force's Pre-IDES, and did not receive access to IDES.

Class certification is proper where a plaintiff shows that it has satisfied each of Rule 23(a)'s four requirements and demonstrates that the claims fall into at least one of the three categories of cases appropriate for class certification under Rule 23(b). *Midkiff v. Anthem Cos.*, 748 F. Supp. 3d

[31] Counsel for Plaintiffs has requested the government's position on the proposed Class definition. Counsel for the government responded that the government's position is not available at this time due to the government shutdown and counsel not being excepted for this case.

376, 384 (E.D. Va. 2024). Because each requirement of Rule 23(a) is met, and because this class is maintainable as a Rule 23(b)(2) class, the Proposed Class should be certified.

B. The Proposed Class satisfies the requirements of Rule 23(a).

Pursuant to Rule 23(a), a suit may be certified as a class action if the following conditions are present:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

1. The Proposed Class is sufficiently numerous.

The numerosity inquiry asks whether joinder is impracticable due to the number of class members. In short, the considerations are whether it would be too expensive, burdensome, and inconvenient—for the parties and the Court—to join all members of the class individually and to litigate the claims of each class member on an individualized basis. *See Thomas v. FTS USA, LLC*, 312 F.R.D. 407, 416 (E.D. Va. 2016) ("Courts consider a number of factors in considering whether joinder is practicable including the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion.").

There is no numeric formula for certification under Rule 23, and courts have stated that a class consisting of as few as twenty-five (25) members could create a presumption against the practicality of joinder. *See, e.g.*, *Midkiff*, 748 F. Supp. 3d at 385; *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) ("[n]o specified number is needed" to satisfy the numerosity requirement); *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967).

Here, as of at least 2019, the Pre-IDES screening process has negatively impacted hundreds of service members. *See* Compl. ¶ 131 (alleging more than 100 individuals in the Proposed Class). The number of class members is readily ascertainable based on the Air Force's own records and easily clears the guiding numerosity threshold of at least 25 individuals in this jurisdiction.

In sum, the numerosity prong of Rule 23(a) is satisfied here.

2. The Proposed Class raises questions of law common to the entire Class.

The commonality requirement for class certification likewise is satisfied. Commonality exists when there are questions of law or fact common to all members of the class. Fed. R. Civ. P. 23(a)(2). The Supreme Court has explained that the commonality requirement is met when there is a question that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 199 (E.D. Va. 2015) (citation modified). Under Fourth Circuit precedent, a "single common question will suffice [if] it [is] of such a nature that its determination will resolve an issue that is central to the validity of each one of the claims in one stroke." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 360 (4th Cir. 2014) (citation modified). In *Soutter*, a sister court in this District held that the commonality requirements for class certification are met where the class "raise[s] a common contention of reasonableness that can be resolved with common answers on a classwide basis." 307 F.R.D. at 205. Commonality exists where class members' claims arise from the same general set of facts and "the class members share the same legal theory." *Brown v. Transurban USA, Inc*., 318 F.R.D. 560, 567 (E.D. Va. 2016) (citation modified).

Here, common questions of law and fact exist as to all members of the Proposed Class, namely, whether the Air Force's Pre-IDES system was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and without observance of procedures required by law.

Further, each Proposed Class member has a common fact pattern: each was denied access to the statutorily-required IDES system. The Air Force is expected to raise common defenses to these claims, including denying that the Department's actions were in violation of federal law and agency regulations.

Here, the central question is common to all members of the Proposed Class: Did the Air Force's Pre-IDES system unlawfully substitute a non-statutory screening process for the mandatory referral and procedural protections required by DoDI 1332.18?

The claims of each Proposed Class member arise from the same operative facts and governing regulations. In every case, a service member experienced a Trigger Event—such as a definitive diagnosis that failed retention standards, a duty-limiting condition that persisted for twelve months or longer, or a chronic medical condition that rendered deployment or reassignment unsafe or unduly burdensome to the military. Under DoDI 1332.18 § 5.2(a)–(b), any such circumstance required mandatory referral into the IDES. Yet, rather than initiating that statutory process, the Air Force diverted these cases into its Pre-IDES system, where AMRO Boards and IRILO panels conducted record-only screenings without standardized medical examinations, impartial review, notice, legal counsel, or any right of appeal.

This procedural detour caused a single, uniform harm across the entire class: the denial of access to the IDES. Whether that denial violated the governing statute and regulation is a pure question of law that can be answered for all affected service members. Importantly, Plaintiffs and the Class they seek to represent are not seeking any particular determination regarding their fitness or discharge type since doing so might raise different issues of fact. Rather, they simply seek an order compelling the Air Force to fully abandon its unlawful Pre-IDES policy and conduct a new evaluation of all service members whose cases were closed by an AMRO Board's evaluation.

Because the Proposed Class' claims arise from the same general set of facts and "the class members share the same legal theory"—namely, the denial of entering the IDES based on the Pre-

IDES' screening process—the commonality requirement is fulfilled. *See Brown*, 318 F.R.D. at 567.

3. The Plaintiffs' claims are typical of the entire Class.

The claims of the Plaintiffs are typical of those of the Proposed Class. Plaintiffs and the Proposed Class members are injured by the same wrongful acts, omissions, policies, and practices of Defendant as described in this Complaint. Plaintiffs' claims arise from the same policies, practices, and course of conduct that give rise to the claims of the class members and are based on the same legal theories.

As the Fourth Circuit has noted, "the commonality and typicality requirements of Rule 23(a) tend to merge." *1988 Tr. for Allen Child. Dated 8/8/88 v. Banner Life Ins. Co*., 28 F.4th 513, 523 (4th Cir. 2022) (citation modified). In a recent class certification decision, this Court found typicality when a lead plaintiff would "advance the same legal theories as other class members." *L.N.P. v. Dudek*, No. 1:24-CV-01196-MSN-IDD, 2025 WL 1551521, at *3 (E.D. Va. May 30, 2025) (Nachmanoff, J.).

Similar to the commonalty analysis reviewed above, Plaintiffs share the same legal theory as other Class members. Namely, Plaintiffs suffered the same procedural injuries to other class members that they seek to redress with this action. Each member of the Proposed Class—including Plaintiffs—was procedurally harmed by the Air Force's Pre-IDES screening process. Plaintiffs and the Proposed Class seek injunctive relief to set aside the Air Force's unlawful Pre-IDES policy.

As Plaintiffs' claims are typical of the Proposed Class, the typicality prong of Rule 23(a)(3) is satisfied.

4. Plaintiffs and Undersigned Counsel will adequately represent the Class.

The adequacy requirement of Fed. R. Civ. P. 23(a)(4) is met as Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Proposed Class. Under Fourth Circuit precedent, adequacy of representation looks to potential conflicts of interest and the competency

of class counsel. *1988 Tr. for Allen Child. Dated 8/8/88*, 28 F.4th at 523-24. As this Court stated in *L.N.P.*, "adequacy is satisfied where class counsel is qualified, competent, and experienced, and where class members do not have interests that are antagonistic to one another." *L.N.P.*, 2025 WL 1551521, at *3 (quoting *Knurr v. Orbital ATK, Inc.*, 220 F. Supp. 3d 653, 658 (E.D. Va. 2016) (citation modified)).

Here, the Plaintiffs have no interest antagonistic to other members of the Proposed Class. Plaintiffs—three service members themselves—have interests entirely aligned with members of the Proposed Class they seek to represent. There are no conflicting interests.

Further, the undersigned attorneys are competent and experienced in class action litigation and veterans' matters. This competence and experience enable the undersigned attorneys to assist Plaintiffs to fairly and adequately protect the interests of the Proposed Class.

Indeed, the purpose of the National Veterans Legal Services Program, whose attorneys serve as co-counsel in this matter, is to represent the interests of veterans and advocate on their behalf, especially in the face of improper policy and unfair treatment, and these attorneys have significant class action experience. The experience of NVLSP's Director of Pro Bono Rochelle Bobroff, is further detailed in her declaration in support of this Motion, attached here as **Exhibit A**. NVLSP, in cooperation with Perkins Coie LLP, have and will continue to zealously pursue the interests of Plaintiff and the Class they seek to represent. Declaration of Rochelle Bobroff ("Bobroff Decl.") at ¶ 8. NVLSP already has invested significant resources to investigate and prepare the Complaint and Motion for Class Certification, and it will continue to vigorously litigate the case, pro bono, on behalf of Plaintiffs and proposed Class members. *Id.* NVLSP has no anticipated conflicts with the proposed Class that would undermine its ability to advocate in the best interest of the proposed Class. *Id.*

Attorneys from Perkins Coie LLP have significant class action and veterans pro bono experience. *See* Bobroff Decl. ¶ 7. Lead counsel Alec W. Farr and Thomas Tobin have successfully

partnered with NVLSP on numerous recent matters, including an *amicus* brief in the U.S. Supreme Court and a summary judgment motion in D.C. federal court. *See* Brief of NVLSP, et al., *Torres v. Texas Dep't of Public* Safety, No. 20-603 (Feb. 7, 2022); *Torres v. Del Toro*, No. 1:21-CV-306-RCL, 2022 WL 5167371, at *1 (D.D.C. Oct. 5, 2022) (granting summary judgment). Mr. Farr and Mr. Tobin have extensive experience litigating class action matters. *See, e.g.*, *Krukas v. AARP, Inc*., 458 F. Supp. 3d 1, 16 (D.D.C. 2020) (defending against class action complaint); *Friedman v. AARP, Inc.*, No. 14-00034 DDP (PLA), 2019 WL 5683465, at *1 (C.D. Cal. Nov. 1, 2019) (defending against class action complaint); *Hesse v. Godiva Chocolatier, Inc.,* No. 1:19-CV-0972-LAP, 2022 WL 22895466, at *1 (S.D.N.Y. Apr. 20, 2022) (final approval of class settlement); *Tan v. Quick Box, LLC*, No. 20CV1082-LL-DDL, 2025 WL 1837737, at *1-2 (S.D. Cal. July 3, 2025) (final approval of class settlement). Like NVLSP, Perkins Coie LLP has no anticipated conflicts with the proposed Class that would undermine its ability to advocate in the best interest of the proposed Class.

In sum, the adequacy prong of Rule 23(a)(4) is satisfied. Undersigned counsel respectfully requests that the Court appoint them Class Counsel on behalf of the Proposed Class.

C. The Proposed Class also satisfies the requirements of Rule 23(b).

In addition to satisfying the four threshold requirements of Rule 23(a), the action must fall within one of the categories of cases set forth in Rule 23(b). This action qualifies for class certification under Rule 23(b)(2).

A class action "may be maintained" under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). As the Supreme Court has explained:

> The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them. In other

> words, Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class.

Wal-Mart, 564 U.S. at 360 (citation modified).

This action easily satisfies Rule 23(b)(2)'s standard. On behalf of the Proposed Class, Plaintiffs are challenging policies and practices that caused procedural harm to the entire Proposed Class. The Air Force's Pre-IDES screening process challenged in this action was aimed at all Air Force service members who were suspected of having a permanently unfitting condition that fails retention standards broadly, rather than targeting any individualized service member's case.

The challenge that Plaintiffs raise here is precisely the kind that Rule 23(b)(2) was designed to facilitate. *See* Rule 23, adv. Comm. note, subdiv. (b)(2) (stating that Rule 23(b)(2) was "intended to reach situations where a party has taken action or refused to take action with respect to a class, and final relief of an injunctive nature or of a corresponding declaratory nature, settling the legality of the behavior with respect to the class as a whole, is appropriate"). Further, certification under Rule 23(b)(2) is appropriate because the Proposed Class seeks injunctive relief, not monetary relief. *See, e.g.*, *Wal-Mart*, 564 U.S. at 360 ("Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class."). Declaratory and injunctive relief that, *inter alia,* compels the Air Force to give Class members the opportunity to access the IDES system and receive the protections guaranteed to them by DoDI 1332.18 and DoDM 1332.18. *See* Compl. ¶ 7.

IV. CONCLUSION

For the reasons set forth above, Plaintiffs hereby respectfully request that this Court (1) certify the requested Class; (2) appoint Plaintiffs Kathleen L. Watts, Robert Newman, and Ryan G. Miller as Class representatives; and (3) appoint the undersigned counsel as Class Counsel.

[Signature Page Follows]

Respectfully submitted this 3rd day of November 2025.

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