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**PREPARED STATEMENT**

**OF**

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**REGARDING**

**UPDATE ON THE IMPLEMENTATION OF RECOMMENDATIONS  
OF THE INDEPENDENT REVIEW COMMISSION ON SEXUAL  
ASSAULT IN THE MILITARY AND THE ESTABLISHMENT OF  
THE OFFICE OF SPECIAL TRIAL COUNSEL**

**BEFORE THE**

**HOUSE COMMITTEE ON ARMED SERVICES SUBCOMMITTEE  
ON MILITARY PERSONNEL**

Good afternoon, Chairwoman Speier and Ranking Member Gallagher, and distinguished members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the actions by the Department of the Navy (DON) to implement the Fiscal Year 2022 (FY22) National Defense Authorization Act (NDAA) Offices of Special Trial Counsel (OSTC) and Department of Defense (DoD) approved recommendations of the Independent Review Commission on Sexual Assault in the Military (IRC).

I want to convey the following on behalf of Navy Secretary Del Toro and the senior civilian and military leadership of the Navy and Marine Corps: we are firmly committed to addressing sexual misconduct within our ranks. The DON is focused on producing, deploying, and sustaining Naval forces that will perform successfully in combat. Sexual assault and sexual harassment adversely impacts our ability to accomplish the mission.

The findings of the Annual Report on Sexual Assault in the Military for Fiscal Year 2021 underscore that the crimes of sexual assault and sexual harassment are pervasive and remain persistent and corrosive problems. These crimes erode unit cohesion, the glue that holds successful teams together in their most difficult hours, presenting a readiness challenge for our Services. Victimized Sailors and Marines, their teammates, and their families suffer emotional, psychological, and physical injuries because of these crimes. We owe it to our Service members to use the data from the Annual Report, as well as the good work that this Committee and others have done, to make informed decisions to prevent sexual violence and address other workplace and gender-related issues within our Department.

Research demonstrates that sexual assault occurs less often in units where members support and respect each other—units where sexual harassment is also less likely to occur. To that end, we are working hard to ensure healthy practices in military workplaces by promoting inclusive environments across units and offices, and targeting risk factors and negative cultures that lead to sexual assault, harassment and other readiness-impacting behaviors.

The FY22 NDAA codified IRC recommendations supported by the Secretary which provide new tools to deter these unacceptable behaviors and, when they occur, to

pursue accountability of offenders. The DON is fully committed to this effort, and we will successfully implement these reforms on the deadlines prescribed by Congress and the DoD. Already, we have made impactful policy changes to enhance victim empowerment, and Secretary Del Toro has directed the Department to expedite changes to leadership development, education, and training so our leaders are better equipped to foster healthier command climates yielding higher-performing teams with cultures of safety, inclusion and respect. We will continue, at every opportunity, to strengthen our prevention, response, and accountability efforts at every possible opportunity.

### **DON APPROACH TO IMPLEMENTATION**

To begin its implementation efforts for the OSTC, the DON developed a long-term, planning framework with a four phase approach oriented towards achieving the full operational capability of these offices. Phase I was the “planning” phase, which began in September 2021 and was completed in March 2022. Phase II is the “building” phase, in which planning is completed and execution begins. Phase II is ongoing and will conclude after the arrival of all Special Trial Counsel at their duty stations by September 2023. Phase III is the “execution” phase, during which the OSTCs will begin field testing processes and procedures in advance of reaching full operational capability by 27 December 2023. Finally, Phase IV is the “assessment” phase, an ongoing and continuous effort to measure and assess the implementation and mission accomplishment of military justice reforms.

The details of each phase are important to review, as they illustrate what progress has been made, and what remains to be DONE. Phase I planning began in September 2021 with the establishment of the Department’s Strategic and Operational Planning Team (OPT), supported by Naval War College strategic planners, and comprised of subject matter experts from across the Navy and Marine Corps uniform legal communities, representatives from the Navy General Counsel’s office, and the U.S. Coast Guard.

Shortly after the FY22 NDAA was passed, the OPT began developing courses of action (COAs) for the organizational structure of the OSTCs. These COAs were then graded using three principles from Secretary Del Toro’s guidance on IRC implementation.

The first guiding principle was to ensure that the OSTCs and their personnel will be independent, both in appearance and in fact. They must be able to execute their

responsibilities free from unlawful interference, reporting directly to the Secretary without intervening authority, as prescribed by statute.

The second guiding principle was that the OSTCs will be specialized, that is, solely focused on the successful review and prosecution of allegations of covered offenses.

The third guiding principle was that OSTCs will be experts, possessed of the capability and capacity necessary to effectively perform the duties assigned to the office by reason of education, training, experience, and temperament for duty.

Secretary Del Toro was briefed on the results of Phase I and approved the proposed OSTC structures for the Navy and Marine Corps in early 2022. The Services then entered Phase II – building towards operational capability.

Phase II began in March of this year and has focused primarily on the development of the initial operational capabilities of the OSTCs. Both Services have identified and assigned interim Lead Special Trial Counsel (Navy) and Deputy Lead Special Trial Counsel (Marine Corps) to supervise the office through its initial stand-up. Further, both Services convened an O-7 selection board through which they have identified their respective Lead Special Trial Counsel nominees. Additionally, each Service is currently in the process of identifying those judge advocates who possess the education, experience, training, and temperament to be assigned as Special Trial Counsel within their respective OSTCs.

While Phase II will continue until next fall, the DON has already started Phase III, the “execution” phase. As part of the execution the OSTCs have begun to develop and establish their processes, procedures, as well as training and recommended certification standards for the handling of covered offense cases. This will well position the Special Trial Counsel assigned to the OSTCs to immediately exercise their authority over covered offenses on or after 28 December 2023.

Importantly, on 7 September 2022, Secretary Del Toro issued his OSTC guidance. This policy, derived from and expounding upon Secretary Austin’s OSTC policy, establishes clear lines of responsibility within the Department of the Navy for the implementation and support of the OSTCs, and sets Departmental deadlines and milestones to ensure successful implementation. In his policy, Secretary Del Toro again emphasized that the OSTCs “shall be independent – both in appearance and in fact;

specialized – focus on statutorily enumerated covered offenses; and expert – possessed of the capacity and expertise necessary to effectively perform the duties assigned.” The senior civilian and military leadership of the DON is committed to executing this guidance.

Finally, Phase IV, the “assessment” phase, is also already in progress and will persist after OSTC achieves full operational status. Pursuant to Section 547 of the FY22 NDAA, the Secretary of Defense, in consultation with the Service Secretaries, the Judge Advocates General, and the Staff Judge Advocate to the Commandant of the Marine Corps, must publish a plan addressing how they will assess the effects of changes with respect to the OSTCs and the disposition of covered offenses. Both the Navy and Marine Corps have begun coordination with the DoD Office of General Counsel on this effort and are actively working to identify methods and measurements of performance.

This process has enabled the DON to set out for the Services a detailed memorandum entitled “Policies Governing the Navy and Marine Corps Offices of Special Trial Counsel”, which Secretary Del Toro signed earlier this month. In his memo, Secretary Del Toro emphasized that the OSTCs “shall be independent – both in appearance and in fact; specialized – focus on statutorily enumerated covered offenses; and expert – possessed of the capacity and expertise necessary to effectively perform the duties assigned.” The senior civilian and military leadership of the DON is committed to executing this guidance.

To facilitate a Departmentally united approach to the implementation of the FY22 NDAA and IRC reforms, Secretary Del Toro established the DON Implementation Advisory Panel (IAP) in February of this year. The IAP is chaired by the Acting Assistant Secretary of the Navy (Manpower and Reserve Affairs) and is comprised of senior leaders from key Departmental and Service offices, including the General Counsel of the Navy, the Navy’s Judge Advocate General, the Staff Judge Advocate to the Commandant, the Assistant Secretary of the Navy for Financial Management and Comptroller, the Director of the Naval Criminal Investigative Service, Office of Force Resiliency, the Chief of Naval Personnel, the Deputy Commandant for Manpower and Reserve Affairs, and other senior leaders within the Department. The IAP is responsible for considering the full

range of programs and tools available to address harmful behaviors and providing the Secretary with recommended actions that achieve unity of effort across the DON.

The IAP meets every two weeks. This panel is pursuing its mandate with the vigor that this subject deserves. The IAP routinely makes requests for additional information and additional staff analysis to inform its recommendations. Secretary Del Toro is continually updated on its work at his weekly senior leadership meetings.

The IAP identified 73 specific FY22 NDAA provisions and IRC recommendations requiring Department of the Navy action. At present, we have already implemented, or partially implemented, 60 recommendations. For example, we implemented an interim policy that removes sexual harassment investigations from the chains of command of the victim and subject, created “Safe-To-Report” and “No Wrong Door” policies to empower victims and survivors to come forward and receive the support they need, promulgated a clear definition of “cyber harassment,” made substantial progress standing up a prevention workforce to prevent harmful behaviors and build climates of dignity and respect, and made significant progress in professionalizing the sexual assault response workforce to best support survivor recovery. The IAP will continue to track and implement all of the IRC recommendations. We are on track for the Navy and Marine Corps to achieve full operational capability of their respective OSTC before the FY22 NDAA’s 27 December 2023 deadline.

The IAP has also focused many of its early sessions on ensuring the Department’s OSTCs are well-positioned for success. For example, the Acting Assistant Secretary of the Navy (Manpower and Reserve Affairs) in collaboration with the DON legal community engaged with the Department of Justice (DOJDOJ) in an effort to learn how U.S. Attorneys’ Offices are resourced, staffed, and trained, as well to gain insight on specific DOJDOJ policies and processes for the investigation, prosecution, and adjudication of comparable title 18, U.S. Code offenses. This outreach provided invaluable information and contacts within DOJDOJ that will be useful to both the DON’s OSTCs and planning teams.

Many of the IAP’s recommendations on the OSTC remain pre-decisional. However, I will confirm that we are on track for the Navy and Marine Corps to achieve

full operational capability of their respective OSTC before the FY22 NDAA's 27 December 2023 deadline.

### **RESOURCING**

Successful implementation of the Services' Office of Special Trial Counsel and the other military justice reforms enacted by the FY22 NDAA and contained in the Secretary of Defense-approved IRC recommendations, requires resources, both in manpower and logistical support. The Secretary of the Navy, Chief of Naval Operations, and Commandant of the Marine Corps fully understand and support this need by allocating resources to ensure successful military justice reform implementation.

We look forward to briefing this Committee on those resources requirements in a few months in accordance with Section 539F of the FY22 NDAA.

### **CONCLUSION**

Within the DON, we believe that leaders set the culture. Sexual assault, discrimination, and harassment of any Sailor, Marine, or civilian erodes readiness and is not acceptable. Only determined and unwavering leadership at all levels will bring about the cultural reform necessary to prevent these offenses. Looking toward the future, the DON will continue to build and execute a comprehensive, holistic approach to sexual assault and sexual harassment prevention, response, and accountability. We recognize that preventing and effectively addressing sexual assault and sexual harassment requires systematic changes to climate and culture. We must and will implement these changes in order to produce, deploy, and sustain Naval forces that can fight and win our Nation's wars and advance the interests and values of the United States of America.