



We exist to help those who cannot help themselves

STATEMENT OF
THE AMERICAN EX-PRISONERS OF WAR
BEFORE THE
COMMITTEES ON VETERANS' AFFAIRS
U.S. SENATE/U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
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Chairmen Mark Takano and Jon Tester, and members of the House and Senate Veteran's Affairs committee, my name is Robert Certain, National Commander of the American Ex-Prisoners of War. Thank you for the opportunity to express our comments today.

It is the biennial "changing of the guard" in Washington, DC and around the country. We have a new President, and a new Congress – the 117th. Some changes to the Veterans Affairs Committees, but a lot of familiar faces as well. I will be repeating much of our message to many of you, but for those of you who are new to the committees, our concerns deserve to be heard and acted upon.

Our legislative agenda has been very consistent year to year. It is based on the earned benefits of the veteran for serving their country, never using the word "entitlements" in the same sentence as veteran. Its center is healthcare and fair compensation to the veteran and their family.

We are grateful for the past efforts of this committee who have stepped up and passed several key pieces of legislation. We look forward to working with you all for the benefit of all veterans.

We are a small organization. Since our founding on April 14, 1942 after the Fall of Bataan, we have worked to bring attention to and support for Ex-Prisoners of War. At the height of our membership, we had 33,000...today it is less than 7,000. In fewer years than we would like, our needs will not merit attention by Congress. Since we are unable to offer our annual oral testimony this year (even virtually), despite our Congressional charter, and our nearly 40 years of appearing before this committee, it appears that time may have already come.

In the last two months, bills have been introduced that will impact the lives of these men and women in a positive way. Many of them – rightly so – are a result of the COVID-19 global pandemic.

Unfortunately, with a new Congress comes the requirement that we have to start all over again with critical bills – when time is of the essence with our former prisoners of war and their spouses. The average age of an ex-prisoner of war from WWII is 98...88 for Korea and only slightly younger for Vietnam.

During this first session of the 117th Congress, we urge attention to several concerns affecting former POWs, other veterans, and their families or survivors.

First, we urge modifications to two existing laws, PL97-37 (the Former Prisoners of War Benefit Act) and the Federal Advisory Committee Act of 1972 which limits volunteer citizen service on Advisory Committees to ten years. The FACA has resulted in long-serving former POWs being removed from the VA Advisory Committee on Former POWs along with their corporate knowledge of the work done. I believe term limits should be lifted for this particular Advisory Committee and opportunity given for former members to return to service, and that the

committee be populated only with persons with direct knowledge of and interest in former prisoners of war.

We also urge the Veterans Affairs Committees to require the Secretary of the VA to place this committee under his direct oversight. In the last dozen years it has been moved away from that Office and placed several levels down under the Veterans Benefit Administration. That placement has made it easy to ignore and its recommendations easy to lose.

We also ask that you require the Department of Veterans Affairs to locate all living POWs on the DoD list and to invite those outside the VA system to come in for protocol physicals to determine service-connected disabilities and to receive treatment in VA Medical Centers and Clinics.

While the new Congress and committees are just getting started, we want to bring your attention to past efforts which need speedy re-introduction in this Congress.

DIC (Dependency and Indemnity Compensation)

Numerous bills introduced to lessen the burdens of our most vulnerable have been overlooked by Congress for nearly three decades. The flat rate Dependency and Indemnity Compensation has not been increased since 1993. The current DIC flat rate is 43% of the compensation of a fully disabled single veteran.

Other Federal survivor programs provide a survivor annuity of 50-55% of retirement pay to the surviving spouse. We propose a 12% increase once or a "Sunset Provision" of 3% each for 10 years for DIC to become equitable with other Federal survivor programs.

In 2020, DIC was \$1,340.14 a month, or about \$16,082 per year. Pretty close to the poverty level for our most fragile citizens.

We receive calls from widows who, because DIC is so low, they must abandon the homes where they lived with their veteran spouse. We also get calls from the children of ex-POWs. They want to know what benefits are available over the stipend they get through DIC. Their mothers are nearly destitute. That is not fair to all veterans and certainly not fair to widows of ex-POWs.

Last year, our testimony included the plight of a widow who was moved from nursing home to nursing home after her money ran out. Her daughter supplemented the costs of her care from her own funds. She asked this committee for an additional \$179 a month to continue, since her meager savings would be used to transport her body back to Omaha to be buried with her ex-POW husband.

No one listened. Nothing was done. And Theresa Hoffmann died on November 9, 2020 at the age of 98.

Shameful.

There were two bills before the 116th Congress...HR3221 with 14 cosponsors and S1047 with just 4 cosponsors. Both of these bills were referred to YOUR committees in April 2019. Two years ago, with no action except shuffling to subcommittees. You owe it to these most vulnerable of our citizens to do more and do it now. We should not and cannot be a nation who abandons the surviving spouse of its veterans.

Along this line, did you know that in order to be eligible for DIC, the veteran must have been rated as 100% totally disabled for a period of 10 years? Many years ago, this requirement was changed for ex-POWS to 1 year, but the vast majority of the 802,000 who currently are rated at 100% still have to meet that 10-year requirement. It takes years – sometimes decades – to increase disability ratings to 100%. And by that time, the veteran is usually in poor health overall. We want this Congress to look at reducing the period from 10 years to 1 year for ALL veterans.

As an adjunct to the primary need to increase DIC, this Congress introduced *S89: Ensuring Survivor Benefits During COVID-19 Act of 2021* to ensure that surviving spouses could get a secondary medical opinion if known service-connected disabilities were not listed on the original death certificates. We wonder why it has not yet been introduced in the House.

In 1981, Congress passed Public Law 97-37 entitled "Former Prisoners of War Benefit Act." This law accomplished several things. It established the Advisory Committee on Former Prisoners of War and mandated medical and dental care.

As Past Chairman of the Advisory Committee, I am concerned that the FACA (Federal Advisory Committee Act) term limits has resulted in the VA Advisory Committee on Former POWs being populated by well-meaning people with no real understanding of or passion for former POWs. That, coupled with the virtual lack of attention from the last several VA Secretaries, has relegated this Committee to the back burner of VA attention by moving it from the Secretary's office and placed several levels down under the Veterans Benefit Administration. That placement has made it easy to ignore and its recommendations easy to lose.

We strongly recommend that Congress pass legislation (possibly titled the *John S. McCain Disability Act*) to declare all former POWs, as verified by the DoD, to be rated by the VA at 100% disabled from the point at which the legislation is enacted, without further protocol exams. This is totally consistent with the POW list of presumptives passed by Congress over 30 years ago.

We are concerned about the unevenness of the issuance of the POW Medal. After passage of the 2013 National Defense Authorization Act, which amended the POW Medal statute at 10 USC 1128(b), DoD regulations were corrected to clarify that the POW Medal can be awarded to any service member not automatically qualified for the award (due to the requirement for armed conflict) so long as they experience circumstances of captivity "comparable to those . . . under which persons have generally been held captive by enemy armed forces during periods of armed conflict." The DoD regulations also clarified that the approval under this provision "may not be delegated below the Secretary concerned." All services subsequently

adopted the same policy. The Air Force invoked the amendment and updated policy in October 2013, when Acting USAF Secretary Eric Fanning approved the POW Medal for nearly 160 USAAF airmen mistreated during World War II by a neutral country, Switzerland, which was outside of armed conflict. The Navy invoked the amendment and updated policy in December 2014, when Secretary of the Navy Ray Mabus approved the POW Medal for six Navy divers from Underwater Construction Team One held captive in Beirut, Lebanon after the 1985 hijacking of TWA flight 847 by Hezbollah affiliated militants—notably also outside of armed conflict. The Army adopted correct policy in 2015, but has never correctly adjudicated a noncombat POW since the passage of the 2013 amendment. When a hostage case was considered by the Army in 2020, officials denied the POW Medal on the basis of the hostage not being held during armed conflict, as well as not being “held captive by foreign armed forces that are hostile to the United States.” Neither requirement exists in current law or regulation. The “foreign armed forces that are hostile to the United States” language was repealed by the 2013 NDAA because of repeated confusion over its meaning. Denying the medal on these grounds is a clear violation of 10 USC 1128(b), which governs noncombat POW Medals, DoD-M 1348.33 Vol. 2, para. 4.15(c)(1)(b), and Army Regulation 600-8-22, para. 2-10(c). Further, the award was denied far below the level of the Secretary of the Army, which is also a violation of the law, DoD regulations, and Army regulations—all of which require a secretarial approval. Repeated requests for reconsideration have been refused. We ask for your intervention in this issue.

For the veteran population as a whole, we also ask for assistance.

Decades ago, Congress looked to increase the disability compensation percentages for World War I veterans as they became aged. It is time to again look at this for veterans of WWII, Korea, and Vietnam. All veterans rated at more than 50% disability would automatically be rated at 100%. This Congress is young for the most part. There are only two members of this Committee older than I am; only four members who are my age. The average age of the World War II veteran is 98. Korean War veterans are 89 and Vietnam veterans are well past retirement age at 74. From nearly 25 million who served during these three conflicts, fewer than 2 million are still alive. We need to look closer at “caring for those who have borne the battle”.

Additionally...the veterans’ means test for access to health care must be eliminated. Should a veteran who worked two or three jobs to provide better for his family later be deprived of healthcare? Each has served his country and earned the same benefits so let us not deprive any deserving veteran of healthcare.

It is most insulting to us when we hear the use of the word entitlements regarding any benefits to the veteran. These are all earned benefits where the veteran has served and sacrificed. Calling them "entitlements" relegates the program to a handout and needs to be eliminated from the language used for veterans.

During wartime, there have been CIVILIAN POWs held in enemy prison camps, often side by side with our military prisoners of war. In WWII, wives and children

were also held with their husbands and fathers. The parents were often individuals working on government contracts building facilities for the military which lead to their capture. To date, they do not receive any compensation nor health benefits other than dental resulting from their imprisonment. Over time, the numbers of these individuals has reduced dramatically yet, there is time to do the right thing and include them within the VA healthcare system. This is deserving treatment for those civilians imprisoned because they were supporting our military operations. It has been decades since a bill has been introduced to correct this long overdue injustice. We ask that you take action in this Congress.

We strongly support the efforts of Honor-Release-Return and The Ride Home, but challenge you to increase results. Since the early days of the 20th Century (WW I) the United States has left more than 100,000 Military personnel either in the hands of our enemy or unaccounted for on the field of battle. Despite the well-publicized/ verbalized policy 'Leave No Man Behind', we have only accounted for approximately 10,000 of those over the last eight decades. Combined conflict totals in the last century equal more than 120,000 prisoners of war repatriated and more than 83,000 still listed as MISSING IN ACTION.

Efforts in North Korea have stalled; the last unilateral turnover of remains was in 2018.

Recovery missions from the Vietnam War came to a halt in 2020 because of COVID-19. There are still 1,585 unaccounted for as of February 2021.

The vast majority of those missing from World War II may never be recovered. And we don't even pursue World War I.

We can and must do better. You must make it so.

We also work closely with the P.O.W Network. The P.O.W. Network was originally formed 30 years ago as an educational group to maintain the focus on the POW/MIA issue. Over the years, maintaining the almost 4000 biographies of those prisoners or missing during Vietnam has taken a backseat to answering daily questions on false claims of heroism or POW captivity. The mission now is to see that those recording history will be held accountable. Facts, not cover-up or fairy tales must be the most important basis for these historical efforts – be it POW/MIA or veterans military claims.

The need to still declassify decades old POW/MIA materials, incident reports, files, witness statements has not changed. Promises were never followed through on. Some families WILL find answers in the material denied to them now.

Records of CIVILIAN POWS held during the wars, many during WWII, need to be released by the Department of Labor. In some cases the individuals died decades ago, yet the family is still denied information.

We still wait for the new POW/MIA data base promised by DPAA. In September 2016 DPAA noted \$9 million in additional funding had been approved for a subcontractor to create a data base that might be ready for use by 2018. Additionally, an NGO offered an already completed WWII data base for use by DPAA - it was turned down.

We would ask that they address the number of POWs in the VA. Many more labeled as such than DoD noted during and after the conflicts. They use valuable resources, cost taxpayers millions, and many violate Federal Stolen Valor laws. Congressional hearings were talked about in 2009 when the problem was exposed by Alan Breed, but nothing was done. Few have been prosecuted. The problem is ongoing more than a decade later.

This is unacceptable on virtually every level. Before awarding benefits to anyone claiming to be recipients of military medals, particularly Medal of Honor, Purple Heart, or Prisoner of War, the VA must check first with the Department of Defense for verification of such claims. Only after verification shall benefits be granted.

Several pieces of new legislation are important and continually improving all facets of the Veterans Administration operation is necessary. We often speak at this hearing about how the VA needs to improve and model its methods about particular successful and efficient industries. We need to get to where we use the term operational excellence and VA in the same sentence. For an organization that large it takes time, but we need to focus on select areas to build some successes to point at.

Thank you for your time and attention in support of ex-POWs and all veterans – deserving heroes every one.