

**LEGISLATIVE HEARING ON H.R. 1199, H.R. 1200,  
H.R. 1126, H.R. 1628, H.R. 1826, A DRAFT BILL  
TO PERMIT THE SECRETARY OF VETERANS AF-  
FAIRS TO ESTABLISH A GRANT PROGRAM TO  
CONDUCT CEMETERY RESEARCH AND  
PRODUCE EDUCATIONAL MATERIALS FOR THE  
VETERANS LEGACY PROGRAM, AND A DRAFT  
UPDATE OF H.R. 299**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON DISABILITY ASSISTANCE AND  
MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

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**LEGISLATIVE HEARING ON H.R. 1199, H.R. 1200, H.R. 1126, H.R. 1628, H.R. 1826, A DRAFT BILL TO PERMIT THE SECRETARY OF VETERANS AFFAIRS TO ESTABLISH A GRANT PROGRAM TO CONDUCT CEMETERY RESEARCH AND PRODUCE EDUCATIONAL MATERIALS FOR THE VETERANS LEGACY PROGRAM, AND A DRAFT UPDATE OF H.R. 299**

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**Wednesday, May 1, 2019**

COMMITTEE ON VETERANS' AFFAIRS,  
U. S. HOUSE OF REPRESENTATIVES,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 2:30 p.m., in Room 1334, Longworth House Office Building, Hon. Elaine G. Luria [chairwoman of the Subcommittee] presiding.

Present: Representatives Cisneros, Allred, Underwood, Bost, Bilirakis, Watkins, and Steube.

Staff Present: Counsel.

**OPENING STATEMENT OF ELAINE LURIA, CHAIRWOMAN**

Ms. LURIA. I call this legislative hearing to order.

Good afternoon, I would like to welcome you all to the first legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs for the 116th Congress. As the Subcommittee's new chair, I welcome the other new Members on both sides of the aisle. I am confident that this Subcommittee will continue the bipartisan effort to care for our veterans who have been injured in service to our nation.

Thank you to Ranking Member Bost for welcoming me and working with me on today's agenda, which includes 7 bills, one of which we are sponsoring together, H.R. 1200, the Veterans' Compensation Cost-of-Living Adjustment Act of 2019. This bill increases the rate of compensation for veterans with service-connected disabilities and for their survivors who receive dependency and indemnity compensation.

The disability compensation rate increase, or COLA, is tied to that which is provided to Social Security recipients under the Social Security Act. The authority required for VA to make this cost-of-living adjustment to veterans' benefits expires each year and must be extended by December, which is what H.R. 1200 does. The increase for 2019 is 2.8 percent.

I also want to welcome to the dais—I think he will be here shortly from votes—Chairman Mark Takano and Ranking Member Phil Roe, who are joining us today to advocate on behalf of draft legislation they have agreed to for H.R. 299, the Blue Water Navy Veterans Act of 2019.

Thank you also to Representatives Conor Lamb and Julia Brownley, who I think will also be here shortly, who plan to speak on behalf of the Veterans Valuing Our Widows and Widowers Act, or the Veterans VOW Act. Without objection, Representative Lamb and Representative Brownley are permitted to sit on the dais at today's hearing.

In addition to the COLA Adjustment Act and the Blue Water Navy Vietnam veteran's legislation we will discuss today, we are also taking testimony on H.R. 1199, the VA Website Accessibility Act, which passed the House last Congress, but did not make it through the Senate before the end of the 115th Congress. The VA Website Accessibility Act directs the VA secretary to conduct a study of all veterans-facing websites ensure they are access to believe veterans be disabilities, particularly, those who are visually impaired.

This accessibility was guaranteed under the Rehabilitation Act of 1973, but VA is not yet fully compliant. This bipartisan legislation is cosponsored by my Committee colleague, Congressman Banks, and will ensure visually impaired veterans can readily access the benefits they have earned and the care they deserve.

VA should strive to make benefits and services accessible to all veterans, regardless of their disabilities. I have personally heard from two groups of veterans who would benefit from this improvement to the VA websites. I appreciate the Blinded Veterans Association of America for being here today to emphasize this need.

I am very proud to introduce this legislation and look forward to hearing the testimony of the VA and veteran service organizations on how it might improve access to VA benefits for the visually impaired.

We will also hear testimony today on H.R. 1826, Mr. Lamb's Veterans VOW Act, which codifies the current rate, the special monthly pension Medal of Honor winners receive at \$1,329.58 per month. It also allows for payment of this pension to surviving spouses, provided they were married for at least one year, or if they were married for less than a year, if they became parents of a child.

Another bill on the docket today sponsored by Representative Lamb, H.R. 2385, which was previously announced as a draft bill, provides the authority for the Department of Veterans Affairs to establish a grant program to conduct cemetery research and produce educational materials for the national cemetery association—National Cemetery Administration's Veterans Legacy Program. Currently, VA awards federal contracts for this program, but the institutions of higher learning who most often receive, and the largest group of participants in this vital work, tell us that working with grants is much more efficient and easier for them to administer.

Finally, we will hear more in a minute about H.R. 299, the Blue Water Navy veterans—Vietnam Veterans Act from its sponsor Chairman Takano and from Ranking Member Roe, who shepherded

it through the House last Congress, unanimously. As a representative of Virginia's Second District, which is home to Naval Station Norfolk and several other Navy bases, I am honored to take part in advancing this legislation through this Subcommittee.

It is my hope that this legislation will make it to the President's desk without delay. This legislation will make Congress' intent clear that Blue Water Navy veterans will receive much-needed and deserved compensation and care.

Again, I want to thank everyone for being here today. We look forward to your testimony and the answers to our questions. I now recognize our Ranking Member Bost for his opening statements.

Mr. Bost, you are recognized for 5 minutes.

**OPENING STATEMENT OF MIKE BOST, RANKING MEMBER**

Mr. BOST. Thank you, Chair Luria.

It is an honor to be back as the Ranking Member of the Subcommittee on Disability Assistance and Memorial Affairs. I want to begin by welcoming Chair Luria and the new Members of the Subcommittee. I look forward to working with all of you.

In the past, this Subcommittee has had one overreaching priority, which is to improve benefits and services for our nation's veterans and their families. I have met with Chair Luria, and I am confident that under her leadership, this Subcommittee will continue to work in a bipartisan manner on issues affecting the brave men and women who have served in the Armed Forces.

To those who testify on our panel today, thank you for all of you for joining us here today to discuss the important pieces of legislation pending before this Subcommittee. These bills are intended to improve the lives of our veterans and their families.

One of the most prominent bills on today's agenda is a draft update of H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019, which would extend the presumption of exposure to herbicides to veterans who served in offshore waters of Vietnam. Over 100,000 veterans served off the coast of Vietnam; unfortunately, many of these veterans have been waiting for 40 years to receive recognition from the VA that their illness may have been caused by exposure to Agent Orange.

Our Blue Water Navy veterans deserve to qualify for the same benefits as their fellow veterans who served on the ground and in the inland waterways. This bill is long overdue and ensures that Blue Water Navy veterans receive the benefits they have earned. Additionally, this will would address the concerns of other Vietnam-era veterans, Gulf War veterans and all of their families and make improvements to VA Home Loan Programs.

I want to thank Ranking Member Roe for his relentless efforts over the past several years to get this legislation signed into law as quickly as possible. And I am confident that the Chairman Takano support—with his support, we will soon be successful at this. Moreover, I am proud to be the lead cosponsor with the chair with bill H.R. 1200, the Veterans' Compensation Cost-of-Living Adjustment Act of 2019.

Veterans and their families should not be worried about how they are going to pay their bills when prices go up. H.R. 1200 would help ensure that the value of the veteran's benefits keep

pace with inflation by giving veterans a cost-of-living increase, if Social Security recipients receive one this year.

I would like to commend one of our freshman Members, Mr. Steube of Florida, for introducing H.R. 1628, the Enewetak Atoll Cleanup Radiation Study Act. Last Congress, we held a Subcommittee roundtable on the cleanup, where we heard from DoD, the National Academy of Science, and multiple veterans, and other stakeholders. Many veterans who participated in the cleanup raised questions at the roundtable about the accuracy of DoD's reports on their radiation exposure. H.R. 1628 would help address their concerns by having the National Academy of Sciences review DoD's assessment. I believe that these veterans deserve an answer about their alleged exposure, and I hope this bill passes the House very soon.

Another bill that has my full support is H.R. 1126, which would allow the VA to mark the name and dates of a deceased spouse on a VA headstone in a private cemetery, just as it does for family members buried in a national cemetery and state cemeteries. My staff has heard numerous concerns from veterans about how VA cannot properly memorialize spouses and its dependents who are buried in private cemeteries.

I appreciate Mr. LaMalfa's lead on this issue by introducing this commonsense legislation that would fix this oversight. I know many of my colleagues here today have worked hard on their proposals. I look forward to discussing how these bills would impact veterans and their families.

With that, I thank you, and I yield back.

Ms. LURIA. Thank you, Mr. Bost, for your comments.

I now recognize Chairman Takano for his remarks.

#### **STATEMENT OF MARK TAKANO, CHAIRMAN, FULL COMMITTEE**

Mr. TAKANO. Thank you, Madam Chair.

First, I want to thank you for including H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019, in this legislative hearing. Today, I, again, advocate for this critically important bill. Last Congress, we saw its unanimous passage under the leadership of Chairman Roe, but, unfortunately, it stalled in the Senate.

As Chairman of the Committee in this Congress, the Blue Water Navy Vietnam Veterans Act of 2019 was the very first piece of legislation I introduced. This year, with a new path forward, I am confident we will finally see this bill passed into law.

I am delighted that today marks the first meeting of the DAMA Subcommittee, whose consistently bipartisan approach sets it apart. Together, Dr. Roe and I present an updated version of H.R. 299, following the Federal Circuit Court's decision in Procopio. That case reversed VA's 1997 decision to deny the presumption of Agent Orange exposure to veterans who served in the offshore waters in Vietnam.

Procopio was a huge step forward, but we need to do more. We need to ensure Blue Water veterans in the event Procopio is appealed to the Supreme Court and overturned. That is why Congress worked together with veteran's service organizations to establish, without a doubt, that Blue Water Navy veterans are entitled to this presumption.



Our current proposal is very similar to the bill passed last Congress. It includes crucial geocoordinates that clarify the territory off the coast of Vietnam that VA must recognize when deciding claims for disability compensation for herbicide-related diseases.

This proposal is the quickest and clearest route to delivering benefits to these deserving veterans. Additionally, our bill extends the presumption of herbicide exposure to certain veterans of the Korean Demilitarized Zone, easing the pathway to disability benefits for those who developed—for those who developed herbicide-related diseases.

Our bill also extends benefits to children with spina bifida of herbicide-exposed Thailand veterans. These comprehensive provisions ensure we deliver essential benefits to those suffering the ill effects of herbicide exposure. Because the majority of DAMA Members are new to Congress, it is important that we hold a hearing to reacquaint ourselves with the key issues and hear views on the draft bill.

I want to welcome The American Legion, VFW, DAV, Vietnam Veterans of America, and the American Academy of Sciences for being here to help us discuss the important bills in front of us today.

Regrettably, VA has chosen not to offer any testimony on H.R. 299 today. The VA has sent a witness to provide views on the six other bills on the agenda, but not on H.R. 299. We welcome him, but I would like to make it clear that the agency was asked to send a witness who could testify on its plans for implementing Blue Water. To achieve the best results for veterans, we must the cooperation—we must have their cooperation going forward. Now, it is regrettable that they are not providing this information to Congress, since it is our obligation to oversee their plans for the implementation of what is now the law of the land.

Now, before yielding back, I want to welcome and introduce distinguished professor Allison Hedge Coke of the University of California at Riverside, who has produced some of the best work in the country as a part of VA's Veterans Legacy Program. Her research on the veterans buried in the Riverside National Veterans Cemetery and her creation of teaching curricula for local teachers is remarkable in the energy and the attention that it brings to the cemetery; her students use her educational programs to revitalize the stories of the men and women buried there.

I look forward to Professor Hedge Coke's testimony on Mr. Lamb's bill, which changes the current Veterans Legacy Project from a federal contract program to a federal grant program. Institutions like UC Riverside tell us that management of grants is administratively easier than the management of contracts for colleges and universities.

And we want to do whatever we can to encourage the work of academics like Professor Hedge Coke, who can help us understand and appreciate the heroism and sacrifices of local servicemembers. So, thank you, Professor, for traveling so far to join us today, and I know it is even a longer trip back home. So, we very much look forward to hearing from you today.

And I yield back, Madam Chair.

Ms. LURIA. Thank you, Chairman Takano.

I know recognize Ranking Member Roe for his statement.

**STATEMENT OF HONORABLE DAVID P. ROE, RANKING  
MEMBER, FULL COMMITTEE**

Mr. ROE. I would like to thank the chair and Ranking Member for their leadership on today's legislative hearing and I would like to associate my remarks with the Chairman.

It is no surprise that one of my top priorities, as Ranking Member of this Committee, is continuing our work on the 115th Congress to ensure that our Blue Water Navy Vietnam veterans receive the benefits they have earned.

Last Congress, by a vote of 382 to 0—let me say this again—by a vote of 382 to 0—and, literally, we probably couldn't agree that the sun came up in the East most days—382 is an impressive number, that we passed for the Blue Water Navy Vietnam Veterans Act of 2018.

Unfortunately, despite the efforts of Senate Veterans Affairs Committee Chairman Isakson and Ranking Member Tester, the Senate never passed the legislation. This is why one of my first actions at the start of the 116th Congress was to reintroduce—was to introduce H.R. 203, which mirrors, last year's Blue Water Navy bill.

Although, H.R. 203 is not on today's agenda, I appreciate Chairman Takano's efforts to maintain the momentum this Committee made last Congress to enact legislation that would benefit the healthcare to our—the benefits and healthcare to our Blue Water Navy veterans.

I am happy to partner with Chairman Takano on H.R. 299 and appreciate his bipartisanship to make sure this time we get the bill across the finish line onto President Trump's desk. I also want to thank all of our VSO partners for their support and help to craft a bill that finally fulfills our nation's promise to these veterans.

Recently, Blue Water Navy veterans won big when the federal Circuit Court ruled in the case of *Procopio v. Wilkie*, that the VA should accept in the waters surrounding the Republic of Vietnam for the Agent Orange presumption, just as VA does for boots-on-the-ground service. I was further encouraged by Secretary Wilkie's recommendation that the solicitor general not appeal the Court's decision.

However, at this time, it is unclear how the Department plans to interpret the Federal Court's holding. That is why I believe that the passing of H.R. 299 is necessary to ensure that those veterans who were potentially exposed to Agent Orange in the waters off-shore of the Republic of Vietnam are guaranteed entitlement of the presumption.

Moreover, the package of H.R. 299 not only addresses the plight of Blue Water Navy Vietnam veterans, but also includes provisions that would extend the presumptions to veterans who served in or near the Korean DMZ beginning September 1, 1967, provide benefits for the children of Thailand veterans who were exposed to Agent Orange, address the concerns of Thailand and Gulf War veterans about their potential in-service toxic exposures, and make improvements to VA's Home Loan Program.

I support the draft update of H.R. 299. I hope it passes the House without delay, and with that, Madam Chair, I yield back the balance of my time.

Ms. LURIA. Thank you, Ranking Member Roe.

I know recognize Representative Lamb to provide his testimony on his bills, H.R. 1826, the Veterans VOW bill, and H.R. 2385, concerning the Legacy Project.

#### **STATEMENT OF HONORABLE CONOR LAMB**

Mr. LAMB. Thank you, Madam Chairwoman.

First, as to the Veterans Valuing Our Widows and Widowers Act, or Veterans VOW Act, 1826, we all know that the Medal of Honor represents the highest possible recognition for valor in combat, and in currently in recognition of that, Medal of Honor recipients are entitled to an additional monthly pension; however, when that Medal of Honor recipient passes away, the pension stops.

And I think all of us in the veteran's community know the important role that our caregivers play for these veterans of all types, but especially for Medal of Honor recipients; they have strenuous public schedules. They are often asked to appear at a lot of events. They really become symbols in our community and many of their spouses carry a lot of the load for taking care of them, for helping to make that possible.

So, what our bill would do is make sure that that pension continues for the spouse if the veteran does, in fact, pass away. I believe that all surviving spouses should be eligible to receive these pensions. They are part of the family that made the sacrifice for our nation and we should recognize them, as such. Thank you, and that is my testimony for 1826.

Would you like me to move on to the other one, as well, Madam Chairwoman?

Ms. LURIA. Yes, please continue.

Mr. LAMB. Thank you very much.

The other bill is H.R. 2385, which we are introducing for the second Congress, the Veterans Legacy Program. And as Chairman Takano noted, we are going to hear some testimony about that today from the folks at Riverside, but this one is just a no-brainer. It is a great bill. This is already an existing program, by which we encourage schools, colleges, people in the community to learn about our veterans in our veterans' cemeteries and publish educational materials about them.

It already exists. It is a contracting program and that is a little bit harder for these institutions, than if it was a grant program. Basically, universities and other places, they know the process for getting grants; they are not as familiar with the process for getting contracts. So, all we want to do is make that simple change.

Near my district, we have a national cemetery for the Alleghenies and we already have local schools signed up and ready to go to research each one of these veterans that are buried there. Some of them even envision something like an app that you would have on the phone where you would go to a veterans cemetery and in front of each headstone, the app could show you who that person was, what, where they served, and what sacrifice they made.

I can't think of anything better to inspire the next generation of kids on their field trips, in their classrooms to want to be part of the military, to honor the sacrifices that these folks have made. So, this is a great program, and we are looking to do everything we can to make it easier to participate.

Mr. ROE. Would the gentleman yield?

Mr. LAMB. And I would gladly yield to Dr. Roe for further explanation.

Mr. ROE. I thank you the gentleman from Pennsylvania. We have a fellow in our—just for information today—a fellow in our office for the next two years who is gathering all veterans, living veterans' stories. And I explained to him, I said, Look, I don't want you to tell me that you won the Korean War single-handedly—I don't want that story—but we are collecting every veteran that will sit down.

It will be digitized and put into the Library of Congress so that 100 years from now or 150 years from now in the future, you can look back digitally and see what your family member or write a history of that. So, I would encourage all congressional districts to try to do this with their veterans if they could.

And it would create a history, that, look, if we had done it 100 years ago, think of what we would have now, the treasure-trove of information.

I appreciate the gentleman yielding. I yield back.

Mr. LAMB. Thank you, Dr. Roe.

And Madam Chairwoman, I yield back.

Ms. LURIA. Thank you, Representative Lamb.

I now recognize Representative Steube, who will offer his testimony on behalf of his bill, H.R. 1628, the Enewetak Atoll Cleanup Act.

#### **STATEMENT OF HONORABLE GREG STEUBE**

Mr. STEUBE. Thank you, Madam Chair, and thank you for hearing this bill. I appreciate it.

From January 1977 through December of 1980, approximately 6,000 American veterans participated in the cleanup of the Enewetak Atoll nuclear testing site at Enewetak Atoll in the Pacific Ocean. The site was home to 43 U.S. nuclear tests from 1948 to 1958 and the cleanup was necessary to return the atoll to Trust Territory of the Pacific Islands of.

The Enewetak Atoll cleanup was performed by a joint task force group with the Departments of Defense and Energy, which rehabilitated the area by conducting radiological surveys, removing contaminated soil and debris, demolishing contaminated buildings, transporting contaminated soil and debris to disposal sites, and preparing the area for the return of the inhabitants.

In this process, veterans who served at Enewetak Atoll were potentially exposed to dangerous doses of radiation through skin contact, breathing contaminated area, and drinking and bathing in contaminated water; however, there is conflicting scholarship on the subject.

In 2018, the Department of Defense conducted a radiation-dose assessment and determined that veterans who served in the clean-

up were not exposed to of harmful levels of radiation, but veterans disagree with the DoD's findings.

Last year in a roundtable before this very Subcommittee, veterans and scientists cited specific issues with the methodology in the assessment of the DoD's review. The scientists from the National Academies of Sciences, Engineering, and Medicine stated that the DoD's methodology may have been outdated and, therefore, the DoD's assessment may be inaccurate.

Though, the DoD has refuted some of these claims, I think we owe it to these veterans to get to the bottom of this and that is why I have introduced the Enewetak Atoll Cleanup Radiation Study Act which calls on the Department of Veterans Affairs to partner with the NAS to study the effects of radiation on veterans. The bill instructs them to conduct a small-scale study to review findings of the 2018 RDA and determine if there are discrepancies with the DoD's findings.

Then, they will be required to report back to this Committee so we can review their findings and determine next steps. The secretary of the VA is also required to provide his plans to carry out any actions based on the study within 90 days of receiving the study. This bill will clean up some of the confusion around the DoD's RDA and address the concern of the cleanup veterans.

This is the least we can do to ensure that those who served our country are getting the care and attention that they deserve, especially if their health was negatively impacted by the terms of their service. I urge you to support this bill and give these veterans the consideration they deserve. I ask that we report the bill favorably out of the Committee to be considered by the full House.

Thank you for your time.

Ms. LURIA. Thank you.

I thank the Members who testified in support of these bills on the agenda today and I would now like to invite those participating in Panel Number 2 to the witness table. Thank you.

Okay. Thank you. I would like to welcome Mr. Sullivan and his colleagues. It has been mentioned earlier, but I want to remind Members that Mr. Sullivan and the others accompanying him will unfortunately not be answering questions on H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019. This was a decision by the VA.

The Subcommittee will hold a hearing on how the VA plans to implement the Act at a later date and we expect to have the VA to appear at that time.

Welcome, Mr. Sullivan, and I would like to recognize you for your statement for 5 minutes.

#### **STATEMENT OF MATTHEW SULLIVAN**

Mr. SULLIVAN. Thank you, Madam Chair and Members of the Subcommittee, I am pleased to be here today to provide the views of the Department of Veterans Affairs on pending legislation affecting VA's programs.

Accompanying me today is Kevin Friel, deputy director for pension and fiduciary from the Veterans Benefits Administration; Dr. Patricia Hastings, deputy chief consultant, Post-Deployment Health Services, from the Veterans Health Administration; and

Derrick Curtis, director of software testing and 508 from the Enterprise Portfolio Management Division, Office of Information Technology.

First, regarding H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019, I would like to note that because the administration is still considering its legal options relative to the Procopio case, VA does not have any views to offer on this legislation and we must respectfully decline to answer any questions you may have today regarding the bill; however, I will provide a brief summary of VA's views on the remaining legislation that is on the agenda today.

As a representative of the National Cemetery Administration, I am pleased to note that two bills on the agenda, H.R. 1126, the Honoring Veterans' Families Act, and the draft bill, now H.R. 2385, on establishing a grant program for the Veterans Legacy Program, are consistent with NCA-related proposals and the President's budget for fiscal year 2020 and as such, VA supports both measures.

The provisions of H.R. 1126 would be effective for veterans that die on or after October 1st, 2018, and we would ask that the Subcommittee consider making this an earlier date by allowing VA to replace veterans' headstones and markers provided with the last 5 years to add information about recently deceased spouses and dependent children.

As a leader in customer service, NCA is sensitive to the concerns of families when a benefit is added or changed and suddenly, what was not available for someone who died last year is available for someone who dies this year.

H.R. 1199, the VA Website Accessibility Act of 2019 would direct VA to examine all departmental websites to determine whether their websites are accessible to individuals with disabilities, in accordance with section 508 of the Rehabilitation Act of 1973. The review would be conducted within 1080 days of enactment, with a report submitted to Congress within 90 days of completing this study.

While VA agrees with the intent of this legislation, we believe the bill is not necessary, because it provides no new authority and because VA already has processes in place to review VA websites for noncompliance and remediate any identified issues. Moreover, we believe that attempting to conduct a universal review within 180 days would be logistically challenging. Lastly, we would advise that the inclusion of self-service kiosks within the Department as part of this compliance review would be problematic, and we are willing to discuss our concerns with the Subcommittee.

H.R. 1200, The Veterans' Compensation Cost-of-Living Adjustment Act of 2019 would increase the rates of disability compensation for service-connected veterans and the rates of dependency and indemnity compensation for survivors of veterans, effective December 1st, 2019. The increase would mirror the Social Security benefit increase, also effective December 1st, 2019. VA strongly supports this bill because it would ensure that the value of these benefits keeps pace with increases and consumer prices.

H.R. 1628, the Enewetak Atoll Cleanup Radiation Study Act would direct VA to enter into an agreement with the National

Academies of Sciences, Engineering, and Medicine to conduct a study on radiation exposure related to the cleanup of Enewetak Atoll. Subject to a provision of funds to conduct the study, VA supports this legislation, which may answer the concerns of veterans who participated in the cleanup at Enewetak Atoll.

H.R. 1826, the Veterans VOW Act, would increase the Medal of Honor, or MOH, special pension rate and provide payment of MOH special pension to surviving spouses of a—to a surviving spouse of a deceased MOH recipient. VA supports this bill, providing Congress can identify corresponding funding.

Extending the MOH special pension to surviving spouses accords with other survivor benefits VA offers; however, VA would require clarification as to whether the remarriage limitations associated with DIC entitlement would apply to surviving spouses receiving the Medal of Honor special pension.

For example, a surviving spouse who remarries prior to age 57 loses entitled to DIC, but it is unclear whether a surviving spouse receiving the MOH special pension under this bill would also lose entitlement if they remarried.

This concludes my statement, Madam Chair. We would be happy now to consider any questions you or other Members of the Subcommittee may have. Thank you.

[THE PREPARED STATEMENT OF MATTHEW SULLIVAN APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Sullivan.

We will now begin with questions, and I will recognize myself for 5 minutes. I would like to start with the VA Website Accessibility Act of 2019. You testified that VA section 508 office currently scans the VA websites to identify noncompliant websites, files, and web-based applications; is this true?

Mr. SULLIVAN. Madam Chair, I believe that is true, but I am going to defer to my colleague, Mr. Curtis, who is the subject-matter expert on that area.

Mr. CURTIS. Yes, ma'am. Thank you for the question. That is true.

Ms. LURIA. So, if it is true that you scan the websites, why is it difficult for you to provide a list to us to those that are compliant and those that are noncompliant?

Mr. CURTIS. The scans take place every month. We contact the content owners to provide them that information so they can take remediation actions. But I was unaware that there was a request for those results to be provided to this body.

Ms. LURIA. Okay. As a result of this hearing, we would like information on which cites that are currently maintained by the VA are compliant and those that are not so we can have an understanding of the scope of the problem of how many sites are not currently compliant.

And I am also going to quote from your testimony, that there is no consolidated, enterprise-wide plan to bring each website, file, or web-based application into compliance with the section 508 of the Rehabilitation Act of 1973.

Why is that?

Mr. CURTIS. Yes, ma'am. We work with the content owners and there are differing complexities and so our approach is to train them and equip them on how to build in the accessibility and let them go at the speed that they choose. Many of them are going faster than others, and so we didn't see a need for an enterprise-wide solution.

And, in fact, in the last 6 months, we have seen a marked increase in the number of websites that are becoming accessible.

Ms. LURIA. Okay. So, you can't tell me how many are and are not accessible. You have no timeline for when you are requiring people to implement the changes, and then, furthermore, you say that 180 days is not long enough for the VA to conduct a review—that was from Mr. Sullivan's testimony—to determine whether veterans—information sites are accessible. And then the report to Congress is not due for another 90 days after that.

Can you explain the difficulty with the timeline, why 6 months is not enough for you to determine the scope of the problem?

Mr. CURTIS. Part of the challenge is that kiosks were included into that definition of a website, and the standards are quite different for a kiosk than they are for websites. Websites, we scan remotely, and kiosks, you would have to physically go to each site and apply those different standards to check for accessibility and that, logistically, would mean going to each and every facility and checking each and every kiosk within that facility.

Ms. LURIA. But is there not a uniform host of software that is loaded on each kiosk, that you would expect to find around different VAs?

Mr. CURTIS. Similar, but not exactly the same. There is also a question of physical limitations associated with kiosks. Under the 508 standards, there is some physical parameters that have to be checked with your presence being there.

Ms. LURIA. Okay. This is a very important issue, and I know that we will hear from someone later on who personally, you know, has experience with trying to access her benefits through these websites that are not accessible. So, it is very important to me, so I would like to continue this dialogue. If there are nuances within the way this is written that can help you do your job to get these benefits to veterans where they can access these websites, I would like to, you know, have more clarity on the specifics if we need to be, you know, more specific in the legislation to accomplish the goal that we want to accomplish.

Mr. CURTIS. Yes, ma'am.

Ms. LURIA. The second thing is, you know, I am very glad to hear, Mr. Sullivan, that the VA has no objections to the COLA bill introduced by myself and Ranking Member Bost.

Do you foresee that there will be any problems implementing the cost-of-living increase on time?

Mr. SULLIVAN. Madam Chair, thank you for the question. I am going to defer that question to Mr. Friel, who is the subject-matter expert on that.

Mr. FRIEL. Yes, ma'am. Thank you for the question.

As far as implementing on time, we wouldn't predict or foresee any problems with doing that, as we do it annually anyway, but we have to wait for Congress to determine what that rate will be.



This will allow us to actually be more proactive and it will also provide a better opportunity for our beneficiaries both, veterans and survivors, to determine what they could see in their following year's benefit.

Ms. LURIA. Thank you. And my last question is relative to the Veterans Legacy Program, H.R. 2385, introduced by Mr. Lamb. Can you anticipate any problems transitioning from the contract-based system to a grant-based system, as proposed by this legislation?

Mr. SULLIVAN. Madam Chair, we do not expect any problems converting to that mode of disbursing funds. We think it will be a great improvement, another tool that we can access to more efficiently disburse those funds and partner with our universities and colleges to develop those educational materials.

Ms. LURIA. Thank you. And do you anticipate any need for an increase in appropriated funds vault to the changeover to the new system in this bill?

Mr. SULLIVAN. Madam Chair, we do not expect any additional appropriations will be necessary to start using the grant authority. We expect to be able to use our current appropriations and just use the new method and the authority available to more efficiently use those funds.

Ms. LURIA. Thank you.

And I will now recognize Ranking Member Bost for 5 minutes for his questions.

Mr. BOST. Thank you, Madam Chair.

Mr. Sullivan, can you—and I know the answer, but I want it on the record—can you please explain why it is important that Congress, for it to reenact a cost-of-living adjustment compensation benefit every year.

Mr. SULLIVAN. Thank you for the question, Ranking Member. I am going to refer that question to Mr. Friel, who is the subject-matter expert.

Mr. FRIEL. Yes, sir. Thank you for the question.

The idea with the Congress giving us a cost-of-living adjustment is there is nothing in the standing statute that says we can mandate us doing it automatically. So, we have to wait for Congress to tell us what that rate will be. And then it is also a means of keeping veterans and their survivors, you know, their benefits as a standard of living and to help them maintain that standard of living.

Mr. BOST. Mr. Sullivan, I am going to go ahead and ask—and you are probably not going to ask, but I am going to ask it anyway, okay—the Committee inferred that the secretary—we are going to infer that the secretary supports H.R. 299, given recommendations not to appeal the Federal Court's decision.

Mr. SULLIVAN. Yes, Congressman. It is true that the secretary has recommended not to appeal the decision to the Department of Justice, but the administration, the Solicitor General of the United States, and the Department of Justice have that final decision on whether to appeal or not, and we have to wait for that decision until we can provide official views or any of our official positions on that bill.

Mr. BOST. Okay. I appreciate that answer.

Mr. Sullivan, I also want to ask, how often just for one of the bills here, is the NCA contacted about a family's desire to add a memorial inscription for a spouse or dependent on a VA headstone that is not or that is at a private cemetery?

Mr. SULLIVAN. Yes, Congressman. In the past fiscal year, we received approximately 900 requests for a replacement headstone or marker that is currently placed at a private cemetery to add the spousal or eligible dependent inscription. That is actually a drop from our previous historical annual averages, which have been around 1,500 requests per year, and we believe that is due to the National Cemetery Administration being very proactive in the last fiscal year in terms of discussing with our funeral directors about the policy that we have to comply with and they, in turn, discussing that with the family members.

Mr. BOST. Okay. I am going to go in the same direction here on a question regarding that particular bill. In your—if you could elaborate a little bit on your testimony on H.R. 1126 regarding replacing a headstone or marker, is it the most effective way to provide the spouse's dependent's inscription, rather than just having it placed on. Can you explain how that is more cost-effective?

Mr. SULLIVAN. Yes, sir. Thanks for the question.

We issue headstones and markers for veterans that are placed in private cemeteries around the world, so it would be infeasible for us to go and amend those headstones and markers with spousal maintenance inscriptions. It would be much more cost-effective for us to issue replacement markers that have the spouses or the eligible dependent's inscription information.

Moreover, because a significant majority of the replacement headstones or markers that we issue for replacement in a private cemetery are the bronze flat markers, those are impossible to actually amend after issuance, so we have to provide a replacement headstone or marker for those.

Mr. BOST. Okay. The next question I have—I am limited on my time here—but can you please give the details and the procedures that VA uses in relation to a compensation claim to verify a veteran's potential in-service exposure to harmful levels of radiation.

Mr. SULLIVAN. Because Mr. Friel is the subject-matter expert on that, I am going to defer this question to him.

Mr. FRIEL. Congressman, I am going to have to take that for the record. My area of expertise is pension and fiduciary service. We typically do not deal with radiation exposure as it relates to our benefits, so we would have to take that for the record.

Mr. BOST. Then, for the record, also, take the other part of it, too, because the question was, performing a radiation doses assessment—does the VA perform individual radiation dose assessments for veterans whose service record indicate that they may have been exposed to high levels of radiation? And if you could get that back, that would be fine.

Mr. SULLIVAN. We will take both of those back for the record, sir, but Dr. Patricia Hastings from VHA is here and she can provide some insight to the second part of that question.

Mr. BOST. All right.

Dr. HASTINGS. Sir, if a person believes that their illness has been caused by radiation incurred during military service, they were

able to put in a claim. At the time the claim goes in, if it is not a presumptive disease, it would go to VBA. They would request a comp and pen exam, which would then go back to the VBA.

At that time, they would send it to my office for an advisory medical opinion, and that is a health physicist that does a dose reconstruction based on actual dosages, or if we do not have dosages, the highest dosage, which would be possible. We always give the benefit to the veterans.

That then goes back to the regional office that does these—that is in Jackson, Mississippi, where they have the experts that work on the radiation claims—at that point in time, it is adjudicated, a decision is made. If the veteran disagrees with the opinion, they are able to appeal. If they disagree with that, they can go to the veteran's benefits—or the benefit—the VBA, the Board of Veteran Appeals, and if they disagree with that, they can go to the Court of Appeals for veterans' claims.

Mr. BOST. So, the normal procedure?

Dr. HASTINGS. It is a normal procedure, with the caveat that we do an advisory medical opinion, a health physicist, and I see all of those.

Mr. BOST. Okay. Thank you. And I yield back.

Ms. LURIA. Thank you, Ranking Member Bost.

With unanimous consent, I would like to recognize Representative Brownley, who is here to speak on behalf of Mr. Lamb's bill.

#### **STATEMENT OF HONORABLE JULIA BROWNLEY**

Ms. BROWNLEY. Thank you, Madam Chair, and thank you for the opportunity to attend your meeting and speak at this hearing. I am here today to discuss the Veterans VOW Act, H.R. 1826, introduced by Representative Lamb, and similar legislation that I have similarly introduced.

We all know the great sacrifices that families of servicemembers make, especially those who lose loved ones. When living servicemembers are awarded the Medal of Honor, they receive a special pension in recognition of their heroism, but when those Medal of Honor recipients are deceased, their loved ones receive no such compensation.

Representative Lamb's bill honors the spouses of these heroes by ensuring that they receive the same pension that the deceased servicemember would have otherwise received. I have also introduced legislation, H.R. 1779, that would authorize Medal of Honor recipients to dedicate an individual to receive the special pension upon their death and establish a process for awarding the pension to a loved one if a Medal of Honor is awarded posthumously.

I was inspired to introduce this legislation after having had the privilege of meeting a Gold Star mother, Dahlia Gonzalez, whose only son, Freddy, died in Vietnam, and was awarded the Medal of Honor for his heroism. Freddy was in the same company as one of my constituents, Sergeant Major John Canley, who was also a Medal of Honor recipient. It was in coming together to acknowledge and pay attribute to Sergeant Major Canley's heroism, that I met Ms. Gonzalez.

Now, in her late eighties, Ms. Gonzalez dropped off school in the seventh grade to help her mother after her father's passing. She

gave birth to Freddy when she was 16 and raised him as a single mother, working as a waitress and then at a grocery store to provide for her only child. Her devotion to her son ensured that he graduated from high school, after which he fulfilled a childhood dream of servicing his nation by joining the Marine Corps.

In 1968, Sergeant Gonzalez lost his life during his second tour in Vietnam, a tour that he insisted on taking, fighting for his men and his nation. Ms. Gonzalez was at her job at the restaurant when she received the tragic news of his passing.

As we now know, Sergeant Gonzalez was awarded the Medal of Honor for his heroism in Vietnam. Since then, Ms. Gonzalez has grown close to the Marines that served with her son and they have helped her with travel to reunions and other financial needs, but still, I believe more can be done.

Although her only child had given his life for our nation in battle, she had struggled to make ends meet in her later years, now that she is no longer able to work. Our country should do more to support surviving family members of servicemembers who have received the highest award for valor, our nation can bestow.

I wholeheartedly support Vice Chairman Lamb's legislation that does just that. We absolutely owe this benefit to the spouses of our heroes.

As I have gotten to know Ms. Gonzalez and the sacrifices she made for her son, I am compelled to ensure that parents and other family members also receive recognition and compensation. Providing the special pension is just one token to recognize the sacrifice that veterans have made on behalf of our nation and the sacrifice that their dependents have also had to bear.

I am pleased that the Subcommittee is considering this important issue and I hope to work closely with my colleagues on legislation to allow parents and other loved ones, like Ms. Gonzalez, to receive this benefit.

I thank you, again, Chairwoman, for the opportunity to speak. And I would just like to say I love seeing you in the chair position and I thank you for your service to our nation, and I know without a doubt, you are going to do an extraordinary job on the VA Committee and chairing this particular and very important Committee. So, thank you for your service, as well.

And I yield back.

Ms. LURIA. Well, thank you. And thank you for taking the time to come before our Committee today to speak on behalf of that important legislation.

I would next like to call on Chairman Takano for his comments and questions.

Mr. TAKANO. Thank you, Madam Chair. And I, too, do like you seeing you in that position, as well.

Let me ask the VA, Mr. Sullivan, regarding the outreach program, the Veterans Legacy Program, in Bill H.R. 2385 by Mr. Lamb, do you see any advantage in the idea of piloting this change before it is enacted?

Mr. SULLIVAN. I think piloting changes does provide some insight before implementation, but I do also feel pretty confident that we can exercise any new grant authority pretty effectively. Within the National Cemetery Administration, we do already have a grants

account that we execute for the State and Tribal Veterans Cemetery Grants Program. So, we do have expertise and experience in that arena.

So, while a pilot would always provide you some early insight and ability to make some corrections, I think we have the expertise to immediately implement this authority once received.

Mr. TAKANO. Given that Professor Hedge Coke had has some time and some experience with the Legacy Program, would you accept input from someone like her, regarding the best practices for the Legacy Program?

Mr. SULLIVAN. Yes, Congressman. Thank you for the question. I would definitely accept input from someone with that expertise.

And I believe the professor has already been in some discussion with our program manager for the Veterans Legacy Program. So, we welcome that input from the educational community.

Mr. TAKANO. So, she's already been giving you some feedback on maybe how to improve the program going forward?

Mr. SULLIVAN. Yes, sir. We would definitely welcome that input and feedback.

Mr. TAKANO. Well, thank you. Wonderful.

I would like to ask Ms. Brunson, with the Blinded Veterans Association, I wanted to know about the—I appreciate the work you have done.

COUNSEL. She's on the next panel.

Mr. TAKANO. Oh, the next panel?

COUNSEL. Yeah.

Mr. TAKANO. Okay. I'm sorry, I got confused there. Let's see.

Mr. Sullivan, let me continue questioning with you. So, I am glad to hear that the VA has no objections to the COLA bill introduced by Chairwoman Luria and cosponsored by Ranking Member Bost. Do you see that there will be any problems implementing the cost-of-living increase on time?

Mr. SULLIVAN. I am going to defer that question to Mr. Friel, who is the subject-matter expert. Thank you.

Mr. FRIEL. Thank you, sir. No, as I said earlier, we do this, the COLA adjustments, normally, annually, anyway. We have a process in place to actually implement that and make it happen.

This bill would allow us to actually be more proactive, instead of having to wait for the decision on what the amount of what the COLA rate would be. This would give us—we could tie it directly to what Social Security does and be able to move forward.

Mr. TAKANO. Okay. Well, thank you. I appreciate your answer.

I yield back, Madam Chair.

Ms. LURIA. Thank you. I now recognize Ranking Member Dr. Roe for 5 minutes.

Mr. ROE. Thank you, Madam Chair.

First of all, Mr. Sullivan, I want to give a shout-out to the National Cemetery Administration. You all do an outstanding job. I think anyone who visits our cemeteries would be very proud of them, so thank you for doing that job.

And since January, my staff has asked at least three times for information on how VA plans to move forward processing the Blue Water Navy claims, given the Procopio decision and subsequent mandate. The Department's response has been that while the solic-

itor general decides whether to appeal the decision, it would be premature for the VA to conduct a briefing on this topic.

However, the holding in Procopio is the current law of the land. It is the law of the land now. The Supreme Court would have to grant a cert on appeal and overturn the Federal Circuit's decision for VA to have the authority not to implement the decision. It could take years, or it may not ever happen.

So, these veterans have waited long enough for a decision, and if VA has not already started enforcing Procopio, it is a violation of law. Mr. Sullivan, what steps is VA taking to implement this decision?

Mr. SULLIVAN. Thanks for the question, Dr. Roe.

I understand that Secretary Wilkie has been proactive in making sure that the Department has started to think about what steps would be necessary; however, because this decision on whether to appeal the Procopio decision is still pending and I believe that the extension was granted to May 29th, we are unable to provide any details on how we may implement that Blue Water Navy decision at this time.

I believe that once that decision on whether to appeal the Procopio decision is made, there will necessarily need to be detailed discussions within the Department and with Congress to implement whatever next steps need to be implemented.

Mr. ROE. Let me share—and I know VA understands this—is that 523 of us are dying every day, Vietnam veterans. And I know I walked all over the DMZ in Korea and not too distant from the time that Agent Orange was sprayed there, myself. So, I have some vested interest in this, and I see people and talk to them all the time.

This appeal may never happen—and I know you don't—you aren't a mind reader; you can't decide what the solicitor is going to do—but if I were you all, and I were the secretary, I would encourage, you know, in the next couple of weeks, let this Committee know, are you proceeding with this, because if I were in his position, I would move forward and have somebody tell me to stop. That is what I would do.

And the reason is, is we have men and women, mainly men, across this country, who have been waiting for almost 50 years for this decision. So, can I have your commitment in the next two weeks, from the VA, that you will give us some direction? I know you said you have to wait until this next decision. That can—I mean, I have seen lawyers in three-piece suits and Allen Edmonds shoes run something out for decades in the courts, while we have got people dying. Can we do that?

Mr. SULLIVAN. Sir, again, we sympathize with the views of Blue Water Navy veterans. Most of us on this panel are veterans, and I know that from listening to the secretary speak, he has veterans at his heart every day. And, you know, we are working to be forward-leaning in case the Department of Justice decides not to appeal the Procopio decision; however, at this time, we just cannot provide a commitment.

I do not want to presume to speak for the secretary on whether we can provide these further details until that decision on whether to appeal or not has been made by the administration.

Mr. ROE. Madam Chair, I ask unanimous consent that these three documents be entered into the record. I know I'm pushing you pretty hard on this—

Ms. LURIA. Without objection.

Mr. ROE. Thank you, Madam Chair.

Mr. ROE. I know we are pushing you pretty hard, but it is time we got this resolved. I mean, I have been on this Committee for 10 and a half years and I know the Chairman worked very closely with me last year. We got this passed through the House unanimously and there are veterans out there that I run into every single day when I go home that ask me about this, and I just—I can't—I don't think that this Committee or this country can tolerate any more delays since we have got a clear direction from the Court now.

And, you know, whether they appeal or not, they could delay that decision 6 months if they wanted to. So, I would encourage the VA to press forward, I mean put the pedal to the metal.

And with that, I yield back.

Ms. LURIA. Thank you, Dr. Roe.

I now call on Representative Cisneros for 5 minutes.

Mr. CISNEROS. Thank you, Madam Chair.

Excuse me, Mr. Sullivan. Just a quick question about H.R. 1126. Is it possible when the veteran, they know—it is a married couple and they know they want to be buried together, is it possible for them to get a marker or headstone that already allows them to have both of their names on that headstone?

Mr. SULLIVAN. Thank you for the question, Congressman. That depends on the placement of where that burial headstone or marker is placed.

So, in our national cemeteries, in our grant-funded state and tribal cemeteries, veterans and their eligible spouses and dependents are already eligible for a burial headstone or marker. So, in many cases where the veteran is buried in the same gravesite as their spouse or eligible dependent, we already know that we are able to provide a burial headstone or marker or a replacement burial headstone or marker that includes both, the information of the veteran and the information of the dependent or spouse.

However, we do not have the authority to provide a separate burial headstone or marker for spouses or eligible dependents in a private cemetery.

Mr. CISNEROS. Well, I am not talking about a separate tombstone. Like, my uncle and my aunt, when my uncle passed away, they got a tombstone that already had a spot for my uncle, you know, his name and his life information and also for my aunt and her information. Is the VA able to do that?

Mr. SULLIVAN. With this new authority, if we receive this new authority, we would be able to provide either a burial headstone or marker with both, the veteran's information and the spouse's information. If the veteran or if the spouse predeceases the veteran, so if the spouse predeceases the veteran, at the time of the veteran's death, with this new authority, we would be able to provide a headstone or marker with both, the veteran's information and the spouse's information.

However, if the veteran predeceases the spouse, the veteran would be issued a headstone or marker with the veteran information and that would be placed in a private cemetery, and then only upon the death of the spouse or eligible dependent, would we be able to issue a replacement headstone or marker that includes both, the veteran's information and the spouse's or dependent's information.

And the reason we have to do that is because we only have authority to mark that grave with the spouse's information, with this new authority, upon the death of that spouse. So, we would not be able to mark that grave with the spouse's information prior to those remains being in that gravesite.

Mr. CISNEROS. And then on H.R. 2385, I just want to make a comment about that. I think it is a great idea that the VA, the national cemeteries are allowed to collect this information. The Navy Memorial, which is a nonprofit organization here, has a website that they call the Navy log. And you can actually go to the Navy Memorial, as well, which is located here in DC, but every acting or former servicemember, veteran of the sea service, whether it be Navy, Coast Guard, Marine, or even the Merchant Marines is allowed to kind of put that information into that log and keep track of it.

So, I am very supportive of 2385. I think it is a great way to collect this information, and so I just wanted to get that on the record that I think it is a great idea. And we need to collect the information for our veterans so that we have a history of those individuals and the service that they did for this country, and with that, I yield back my time.

Ms. LURIA. Thank you, Mr. Cisneros.

I now call on Mr. Bilirakis for 5 minutes.

Mr. BILIRAKIS. Thank you, Madam Chair. I appreciate it very much.

And, first of all, I want to associate my comments with Dr. Roe. Our Blue Water Navy veterans have waited too long.

And my question for the entire panel—we will start with Dr. Sullivan, given the recent history, how do you believe the VA and DoD should work together with Congress and stakeholders to address future toxic exposure issues to ensure that we have evidence-based, scientific data necessary to determine whether a disability is linked to military service?

Again, we—obviously, Agent Orange, our Vietnam veterans have waited too long over the years and now we have the toxic waste. What is going on in Iraq and Afghanistan—the burn-pit issue? We have got to get this right, and our heroes have been waiting too long, and we have to work together, because it is just not fair.

So, Dr. Sullivan, please, if you can answer that question, I would appreciate it. And if the panel has any input, please give it to us.

Mr. SULLIVAN. Thank you for the question, sir.

Undoubtedly, VA needs to work with DoD and Congress to address these veterans' needs. I think the person on this panel that could best speak to that would be Dr. Hastings, so I am going to refer this question to her.

Mr. BILIRAKIS. Okay. That is fine. Please.

Dr. HASTINGS. Thank you, Mr. Sullivan.



Sir, we work with the DoD very closely in Post-Deployment Health Services at the VA. We have a deployment health working group that meets monthly. We have other groups that work on issues.

Congress has been very helpful to us with the Airborne Hazards and Open Burn Pit Registry, which is very active, and we are starting to data mine that. We also have worked very closely with your help with the National Academies of Sciences, Engineering, and Medicine, to answer some of the questions that are important to veterans.

One thing that we are doing that is very exciting is the Individual Longitudinal Exposure Record. In my office right now, we have 6 registries. We have the Agent Orange Registry, the Gulf War Registry, the Toxic Embedded Fragment Registry, the DU Registry—depleted uranium—airborne hazards.

So, these are separate registries, but if we have—we are working with DoD on the Individual Longitudinal Exposure Record, which would be a record that starts the day that the person signs into basic. It would include all of their deployments, where they have been, any monitoring that is done in the area, and we would be proactively looking at exposures. We would be able to build cohorts.

For example, if we found out there was a problem later on, as we did at Qarmat Ali, the water treatment plant in Iraq, that there was chromium there. And we are following those veterans right now—there are about 700 of them—we would be able to say, there has been a problem here, we need to look at these people specifically. We would be able to get ahold of people better. We would be able to build cohorts for research.

But the Individual Longitudinal Exposure Record is extremely powerful. It goes into its initial operating phase this fall, and it has been with your help that we have been able to do that.

Mr. BILIRAKIS. Thank you. But I want to make a statement. How about giving them the benefit of the doubt and giving them immediately, the VA—all right. I will go on to the next question for Mr. Sullivan.

Mr. Sullivan, what criteria does the Department use to award contracts for the Veterans Legacy Program?

Mr. SULLIVAN. Yes, Congressman. We have several criteria for the Legacy contracts. First, only universities or nonprofit education organizations may apply. The teams that are working on developing the Veterans Legacy Program material must be led by tenure-track faculty with terminal degrees. Undergraduates and graduates that are engaged in veterans research, must be researching in an instructional context, or in other words, it must be part of coursework. Faculty teams must partner with local K through 12 teachers who will engage their students.

Students will research veterans interred in national cemeteries of focus near the public—or I'm sorry, the near the universities or colleges that are working on developing these products. Students must visit the national cemetery of focus. Students that are conducting research must produce research that will be accessible to the public.

Faculty teams must work with their K through 12 partners to produce instructional materials that are standards-aligned, and

they must develop at least five lesson plans for use in K through 12 education and defined plans to extend the memorialization of Veterans Legacy. The project plans must include designs for instruments to assess the effectiveness of student participation in the program and the students must participate in either Memorial Day or Veterans Day ceremonies at the national cemeteries of focus.

Mr. BILIRAKIS. All right. Thank you very much. I appreciate it. Thank you for your testimony.

I yield back, Madam Chair. Thank you.

Ms. LURIA. Thank you. And I think that concludes questions from the Members of the Subcommittee.

So, thank you, Mr. Sullivan, Mr. Friel, Mr. Curtis, and, Dr. Hastings for appearing before us today.

I would like to invite the third panel of witnesses to the table. As they come forward, I will introduce the witnesses on the third panel. We have Ms. Melanie Brunson, government relations officer for the Blinded Veterans Association, Mr. Karl R. Horst, retired U.S. Army Major General, and president and CEO of the Congressional Medal of Honor Foundation, also joined by Ms. Allison Hedge Coke, distinguished professor of creative writing at the University of California, Riverside.

So, Ms. Brunson, I would like to recognize you first for 5 minutes for your statement.

#### **STATEMENT OF MELANIE BRUNSON**

Ms. BRUNSON. My apologies. Thank you, Chairwoman Luria, Ranking Member Bost, and distinguished Members of this Subcommittee for the opportunity to speak to you today.

As the only veterans' service organization exclusively dedicated to meeting the needs of blinded veterans and their families, BVA is pleased to support the legislation that is under consideration by this Subcommittee today. We believe that these bills will positively impact the quality of life for veterans and their families.

I will focus the remainder of my remarks on one of these bills, in particular, H.R. 1199, the VA Website Accessibility Act. BVA supported this legislation when it was first introduced in the last Congress and we were very pleased when it passed the House with bipartisan support. We hope the current House will repeat this result and that at this time, the Senate will also pass this legislation. BVA supported this legislation and continues to do so.

Although the situation has improved in recent years, the fact remains that VA regularly releases web pages and other forms of communication that pose major accessibility barriers for some of our nation's most vulnerable veterans; those with catastrophic disabilities, such as blindness and traumatic brain injuries that impair their ability to read.

There is an expectation today that virtually every communication between Government and the people it serves can be conducted online and by the use of smart devices. This expectation is shared by many veterans, including some with disabilities. Veterans have come to expect the ability to do things like schedule appointments at VA medical centers, fill prescriptions, and file claims for VA benefits online, at any time, day or night.

Increasingly both, the VA and the veterans it serves, finds devices helpful. Kiosks help with check-in for appointments at medical centers and video-conferencing technology enables consultation between doctors and patients that might not otherwise occur.

Under these circumstances, anytime that issues related to the accessibility of such tools for veterans with disabilities are minimized or overlooked, some of our nation's most vulnerable veterans are left behind. Then, when these veterans can't access veterans' programs or services, this could, in turn, lead to more serious consequences such as exacerbation of their disabilities, depression, and possibly suicide. The longer VA waits to address such accessibility barriers, the greater the risk to these veterans.

BVA believes this waiting game should end now, and the person who can most effectively put an end to it is VA Secretary Robert Wilkie. Unless and until VA's leaders make it known that they are committed to ensuring that VA's electronic communications are accessible to all veterans, including those with disabilities, the wait will continue, and some veterans will be left out to their detriment.

H.R. 1199 provides an impetus for such a commitment by VA's leadership, but this legislation will only do so much. Its requirement that the VA secretary file a report to Congress containing a plan for addressing current accessibility barriers, though beneficial, does not ensure the subsequent removal of those barriers, nor does it ensure that those barriers or others won't reappear in the future.

We, therefore, urge the Members of this Committee to support this legislation as the means of beginning a long-term effort by Congress to use its oversight authority to ensure that VA communicates using media that are accessible to all veterans, regardless of disability. If Congress gets serious about accessibility, VA's leadership will have yet another reason to do so.

With that, I will conclude by saying, thank you, again, for this opportunity, and I am happy to answer any questions you may have.

[THE PREPARED STATEMENT OF MELANIE BRUNSON APPEARS IN THE APPENDIX]

Ms. LURIA. Ms. Brunson, thank you again for being here today and for your remarks.

I will now recognize General Horst for 5 minutes.

#### **STATEMENT OF KARL R. HORST**

Mr. HORST. Madam Chair, thank you for your service and thank you for your leadership of this Subcommittee, as well as the distinguished support of your Committee for our veterans. It is an honor and a privilege for me to be here this afternoon.

At the Congressional Medal of Honor Foundation, we have the privilege of working with our Nation's truest heroes, the recipients of the Medal of Honor. The mission of the Medal of Honor Foundation is to support the Medal of Honor Society, the recipients and their outreach programs, and to preserve the legacy of the Medal of Honor through education, outreach, and recognition.

The Foundation also preserves the legacy of the Medal of Honor by promoting American values, specifically the qualities of courage, sacrifice, selflessness, patriotism, citizenship, and integrity.

I am here today to reinforce and advocate for the Congressional Medal of Honor Society's position supporting H.R. 1826, the Veterans' Valuing Our Widows and Widowers Act. The Society concurs with the language in the legislation outlining the payment of a special pension to the surviving spouses of Medal of Honor recipients. In the absence of a surviving spouse, the Society believes the special pension should follow a succession to the designated next-of-kin caregivers to receive the special pension from the Federal Government.

The Committee's initiative to amend H.R. 1826 is both timely and necessary. Today, there are only 71 living recipients of the Medal of Honor, and they are a rapidly diminishing national treasure.

Since January 15th this year, three more recipients have passed. The average age of the living recipient is 73 years old; the average age of the 58 World War II, Korea, and Vietnam veterans is 79 years of age. In fact, 18 of our living recipients are more than 80 years old.

We at the Foundation have an opportunity to work with the Medal of Honor recipients at events throughout the year. I have seen firsthand how important spouses and caregivers are to our Medal of Honor recipients. In most cases, the caregivers are next-of-kin, family members, there are some instances where caregivers are not next-of-kin. However, to be clear, the Medal of Honor Society only supports the designated next-of-kin caregivers to be eligible to receive the special pension.

The spouses and caregivers work tirelessly to ensure the recipients are able to participate in outreach events where they interact with the American public. In fact, spouses and caregivers allow recipients to travel and participate in outreach programs far beyond the normal age where most Americans will retire or limit their travel.

The recipient stories of courage and valor in combat, and their compassion for fellow Americans, are inspiring to all who have the opportunity to come in contact with them. Their spouses and next-of-kin caregivers help make that possible, and this legislation is appropriate to support them and the recipients.

The Society feels that the special pension is so important that the Society provides a 1-year continuation of this compensation to ease the burden on surviving spouses and designated next-of-kin caregivers.

Madam Chair, thank you for the opportunity to be here today, and I am happy to take questions at your direction.

[THE PREPARED STATEMENT OF KARL R. HORST APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, General Horst.

I now call on Professor Hedge Coke. You are recognized for 5 minutes for your statement.

#### **STATEMENT OF ALLISON ADELLE HEDGE COKE**

Ms. HEDGE COKE. Subcommittee Chair Luria, Ranking Member Bost, and Members of the Subcommittee, I want to thank you for the opportunity to testify before you today.

My name is Allison Hedge Coke, I am here on behalf of the University of California at Riverside, in support of the draft bill to permit the Secretary of Veterans Affairs to conduct a grant program to conduct cemetery research and to produce educational materials for the Veterans Legacy Program. I am a poet, writer, and distinguished Professor of Creative Writing within our College of Humanities, Arts, and Social Sciences, and the Principal Investigator of the Along the Chaparral, memorializing the enshrined Cemetery Research Story Project.

Story and culture are inextricable, and are the common thread of human knowledge. You might imagine a story as a continually evolving, multi-dimensional entity, spherical, that we intersect with on an as-need-to-know basis to learn in human society. The site we work with, Riverside National Cemetery, represents story of life in our region; it represents honor and service, an ulterior hope for peace; it represents the greater remarkable lives that continually add to the story, whereas the surrounding populations have at stake value from kinships that are interred here.

Bringing UCR students and recent alumni into classrooms to foster storying research programming encourages K–12 students to look to education. Classroom youth have significant ties to the cemetery. They may not realize until the project is on their desk and they have given themselves to the discovery of family and neighborhood ties. Story creates culture, it teaches us who we are and how to be in the world, and it leads our futures.

The Legacy Program delivers this terrific meeting of story and culture, and bridges the university to K–12 schools in surrounding cultures and communities that make up our region.

In tribute to those interred, we created an interactive GiS Web Story app and mapped the cemetery with cutting-edge digital mapping. Its populated points affiliate hundreds of resulting K–12 tribute stories to subject gravestones. We published a print anthology. We have produced two documentary film archives, including nine films, a making-of documentary and eight portrait vignettes of those interred. We have produced five K–12 student performances and internationally-broadcast radio play of stories. We have also produced dozens of lesson plans toward a curriculum base in 14 months.

To date, we have worked successfully and collaboratively with over 2700 K–12 students in approximately a hundred classrooms in these 14 months, in public schools and at Sherman Indian School, whereas an ongoing project has started for a Veterans mural at Sherman Indian High School.

Too, the project has fostered an understanding for our research library, the Tomas Rivera Library, to serve as a receptacle for memorabilia denoted to the Riverside National Cemetery by next of kin.

Challenges within the contract versus grant include the university system, formulated to address a more typical faculty grant system, whereas calls for proposals give a generous length of response and proposal calls and submissions coincide with our academic programming. The initial Legacy Program call came during winter holiday, whereas to step up as a PI, I was left to create the contract without regular support of primary contacts within the university

and without the ability to continue planning with K–12 schools, who were also on holiday. The second call came in the holiday week in November. So, to write the proposals, my major holidays in 2017 and '18 were both sacrificed.

If the university has a grant opposed to contract, the system is set up as a draw-down, so at the end of each month the university can draw down electronic funds to pay the services rendered. The grant would allow for more regular and fluid payments in this case, and service paid is served and greater ease of ability of institutional service to the program. A grant program would solve these dilemmas and ease our collaborative work.

I want to thank you for allowing me to be here. I know that many of you are strong supporters and advocates for veterans. I also want to leave on the record our thanks to our representative, Chairman Takano, for recent visits and for allowing us to speak with Randy Reeves, the Undersecretary, about our project recently, and for serving our Native vets as well on campus.

I will be delighted to answer any questions you may have.

[THE PREPARED STATEMENT OF ALLISON ADELLE HEDGE COKE APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Professor Hedge Coke.

I now recognize myself for 5 minutes for questions and I would like to start with Ms. Brunson. I greatly appreciate the work that you have done to advocate for and improve access for visually-impaired veterans. I was concerned to hear that access to the Veterans' Crisis Line, the chat feature was temporarily lost for visually-impaired veterans last year. Do you feel that implementation of H.R. 1199 would help reduce loss to access to these critical services in the future?

Ms. BRUNSON. To the extent that this legislation does put in place the mechanism for developing a plan to access those features—to resolve those access barriers that exist at the time that the evaluation and report are done, yes, indeed. This is a welcome process. The plan for action would be a good thing, because, as the VA witness noted earlier, there isn't currently an enterprise-wide plan in place, and we believe that there needs to be a greater focus within the VA on resolving such barriers and the way to do that is to focus more attention across all of the business lines.

Ms. LURIA. Thank you. And can you explain to us some of the technologies that are most useful and most impactful for the blind as far as accessing websites?

Ms. BRUNSON. Many blinded veterans currently use smartphones, because both Android phones and the iPhones in particular have screen readers that are built into them. And by turning on magnification features or features that make the phones talk, one can go online freely using the web browsers that are built in. Of course, blind veterans in particular and those with other reading disabilities as well have been using computers to access websites for a long time. Even devices like kiosks are equipped commonly with accessibility features.

Ms. LURIA. So you would assess that these are readily-available technologies—

Ms. BRUNSON. That is correct.

Ms. LURIA [continued]. —that many people who are blind or visually impaired are already familiar with, and they are not particularly costly or difficult to implement, because they are widely used elsewhere?

Ms. BRUNSON. That is correct.

Ms. LURIA. Thank you.

I will now turn to General Horst. Thank you for being here as well. And one of the responsibilities of the DAMA Subcommittee is to appropriately memorialize veterans, and your foundation does an amazing job of preserving this legacy of service and so often the great sacrifice of our heroes.

You suggest an amendment that would allow honorees to designate next-of-kin caregivers as eligible to receive the special pension. Would you envision this designation to be for the lifetime of that designee?

Mr. HORST. Thank you for that question, ma'am. No, we would envision it to be for the same 1-year period that it is for the spouse, for the surviving spouse, we would make the same recommendation for a next-of-kin caregiver that it would be a 1-year period.

Ms. LURIA. Just for clarification, I guess I misunderstood, I thought that the way the bill was written was that it would be a continuing benefit.

Mr. HORST. If you see it as a continuing benefit, then we would support that continuing benefit for a next-of-kin caregiver, as designated by the Medal of Honor recipient.

Ms. LURIA. And how does the Foundation view the suggestion by some that the designation for the surviving spouse should end in the event of remarriage, for example at the age of 55, such as in other programs?

Mr. HORST. We believe that the criteria for the surviving spouse or next-of-kin caregiver would be consistent with the DIC criteria. It should mirror the VA's criteria as well. So before age 57, if a next-of-kin or a surviving spouse remarries, then they would lose that benefit. The special pension should mirror DIC.

Ms. LURIA. Thank you.

And I yield back the remainder of my time and I now call on Ranking Member Bost for his questions.

Mr. BOST. Thank you, Chair.

And, Ms. Brunson, I know you have already expanded and my question was almost similar to the chair's, but I would like to know an explanation for whenever the—you know, such as an aid benefit right now, if you go online, if you are—with your organization who are blind, you can't access it now; is that correct?

Ms. BRUNSON. There is a lot of variation between what is accessible and what isn't. Some of the websites and some of the online tools work wonderfully, others do not. It is sometimes simple as things like you can on occasion fill out a form, get all the information loaded, but you can't find the submit button. You know, there are sometimes features that prevent one from completing a task that you can partially do, but there are other times when there are—there are varying degrees, I guess, of accessibility-based depending on which resource you are talking about.

Mr. BOST. Has your organization worked already with the VA to notify them on which areas we would want to—which ones are working and which ones aren't?

Ms. BRUNSON. Yes. We meet regularly with the staff of the Section 508 office and we point out to them any time we encounter, or our members notify us about issues, and they try to be very responsive in resolving them, but sometimes it does take us to let them know.

Mr. BOST. All right. Well, hopefully, we will pass this legislation and we will be able to make sure how important that is, I think all of us can agree.

The next question is for Ms. Hedge Coke. If you could, could you expand again, because I heard it in your testimony, how difficult it is or what the different problems that exist with the difference between a grant and what the contract is at this time?

Ms. HEDGE COKE. Okay. So, financially for the university, grants are on what is called a draw-down system and contracts are paid at the end of. So on a draw-down system, monthly, funds become available to pay out for services rendered, and with a contract the funds are released at the end, for the most part. So the university is without supporting funds and is taking it out of their own care to cover the program. So it is not something universities are used to doing; the system is really set up for a grant system.

Two, within this I was mentioning faculty issues. The VA had come to our campus several times to talk about opportunity with Legacy Program when they were initiating interest at universities nationwide. I was in Montenegro doing some things for the embassy the first time they came; I was out of state another time. And I got back, they couldn't get anybody to step up as PI, and I said I would love to do it. My father is a World War II vet, he had recently passed away. He got through World War II reading Rumi. And I came into poetry as a poet reading Randall Jarrell's Ball Turret Gunner. These things are effective in my work as a writer; I work in film. All the assets of the program that are used in our project I have done and knew I could lead.

So I stepped up as PI. I had no university primary consultations available to me, because people were on their winter break. The K-12 schools I intended to work with were also on winter break. So it is one thing when I sacrifice my winter holiday, it is another thing when the resources that are normally available to a faculty member are not. So I don't know that anyone else would have stepped up. And the same thing happened in the next contract period for the next 2 years, it came on a Thanksgiving. So another holiday sacrificed with minimal support. Yeah.

Mr. BOST. Thank you.

I yield back.

Ms. LURIA. Thank you.

I now call on Chairman Takano.

Mr. TAKANO. Thank you.

Welcome, Professor Hedge Coke.

Ms. HEDGE COKE. Thank you.

Mr. TAKANO. It is good to see you here. Can you tell the Committee how much support our community has, the Inland Empire and Riverside, for this Legacy Program?



Ms. HEDGE COKE. I would be happy to, it is a great pleasure.

The region that we are in, Riverside National Cemetery, serves a 70-mile perimeter. Within this region, depending on who you are talking to or what year they are looking at, rationales to decide the numbers, it is anywhere between fourth and eighth in the Nation for service in different aspects, which is a huge contingency of service over the years. There are also 19 reservations in the local area, four which have proximity to the cemetery site. As you know, Native vets have always had a high military service as well.

The Latino community there has been a cull group during times of action for front line members in service.

So we have a very large network of veteran families. As I said a minute ago, the kids are connected inextricably from this site. When our project lands in their classroom, oftentimes a third of the room has somebody there that they came from, they descended from buried there. So we may assign them a name and they will raise their hand and say, well, my grandma says I have to do Uncle Bob, and that happens quite often.

So we are helping to reinvigorate the community's involvement with those that have passed as well and keeping their stories memorialized and live.

King High School has a program in Riverside which does oratory from living vets every year. It is a 10-year program. When I started this project and went to King High, the first roster we used was their final roll count that they had done over the years of people that they had interviewed, and I located who was buried at this cemetery and that was our start group that we isolated for story.

We have about 200 student veterans on our campus, the veteran population on campus is somewhere around 450, including dependents of active and veteran military servicemembers. We have a veterans' center on campus.

I also teach in the medical school in narrative medicine and my students serve—who are humanities students serve the vets' center during finals—and coping techniques and such through story, the medical students have hospitals to do this in. But we have a huge contingency of service active people and former servicemembers, many disabled citizens. We are very near; March Air Force Field brought a lot of people to that area of California as well.

I think that is the nutshell.

Mr. TAKANO. Well, Professor Hedge Coke, you also mentioned the Native American tribes.

Ms. HEDGE COKE. Yes.

Mr. TAKANO. Has there been much interest among the tribal members?

Ms. HEDGE COKE. Oh, yes. And I have to say of our team on campus, a large contingency of the co-PIs and myself are affiliated with the California Center for Native Nations on Campus and we were the first to step up on campus. Many of the students involved are also Native and/or work in Native studies. And in the school districts, serving in classrooms, a lot of students who are going out to serve the kids are also from that background.

In addition to Sherman Indian School, we are adding Anza and Noli this summer. And not only did Sherman work at doing storying, but they put together the radio play that we broadcast

internationally last November, and they created the mural that is now up at the cafeteria area, veterans' mural.

They also have a lot of veterans' pow-wows, not only on the reservations, but in the urban communities and at Native school as well.

Mr. TAKANO. Wow. And of course the prominent Latino veteran Ismael Villegas—

Ms. HEDGE COKE. Yes.

Mr. TAKANO [continued]. —is a Congressional Medal of Honor recipient.

Ms. HEDGE COKE. Absolutely.

Mr. TAKANO. And so we have a wide—cast a wide net in terms of the story that we tell. The stories that we tell really are quite diverse and inspiring of the history that they bring.

Ms. HEDGE COKE. Yes. Also, Tuskegee Airmen are out there, there are a lot of women soldiers buried out there, Asian American soldiers. It is not a microcosm of society; it is the same size as Riverside. So it is twin cities, the living and the dead, and so it is a separate macrocosm of society there.

Mr. TAKANO. Well, thank you.

I yield back, Madam Chair.

Ms. LURIA. Thank you, Chairman Takano. I now call on Ranking Member Roe. No questions?

Well, thank you very much to our panel for appearing today and taking time to provide your statements and answer questions.

I would now like to call the fourth panel to the witness table.

[Pause.]

Ms. LURIA. So, as they come to the table, I will introduce the members of the fourth panel. This includes Mr. Carlos Fuentes, Director of the National Legislative Service for the Veterans of Foreign Wars; Mr. Rick Weidman, Executive Director, Policy and Government Affairs, at the Vietnam Veterans of America; Mr. Chanin Nuntavong, Veterans Affairs and Rehabilitation Division Director at The American Legion; Mr. Shane Liermann, Assistant National Legislative Director, at the Disabled American Veterans; and Mr. David Butler, Director of the Office of Military and Veterans Health at the National Academies of Sciences, Engineering, and Medicine. I would like to thank you all for being here today.

[Pause.]

Ms. LURIA. We will start with Mr. Fuentes.

Mr. Fuentes, you are recognized for 5 minutes.

#### STATEMENT OF CARLOS FUENTES

Mr. FUENTES. Chairman Luria, Ranking Member Bost, and Members of the Subcommittee, on behalf of VFW and our Auxiliary, thank you for the opportunity to present our views on legislation pending before the Committee.

I would like to first begin by thanking the Committee, the Chairman and the Ranking Member, and especially the staff, for your tireless dedication and hard work on H.R. 299, and for working to ensure the Blue Water Navy Veterans receive the benefits they have been wrongfully denied for more than a decade.

The VFW was rejoiced with the overwhelming decision of VFW-supported *Procopio v. Wilkie* court case, which reversed a years-

long ruling and paved the way for the restoration of benefits for Blue Water Navy Veterans. We would also like to thank Secretary Wilkie for his recommendation to not appeal the decision; however, the decision can be challenged and overturned in the future. Congress must pass H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019, to make certain that Blue Water Navy Veterans never have their benefits taken away ever again.

This bill also includes expansion of much-needed benefits for Korea DMZ veterans and Thailand veterans. The VFW supports expansion of benefits for Korea DMZ veterans who suffer from diseases and illnesses directly linked to Agent Orange exposure. While many of these veterans receive presumptive disability compensation for their service-connected conditions, hundreds are left out, despite clear congressional intention for them to be included. This legislation would provide them the benefits they have also been wrongfully denied.

H.R. 299, unfortunately, did not pass last Congress, because one Senator doesn't believe that Agent Orange made Blue Water Navy Veterans sick and another one was concerned with the cost. This Congress cannot let veterans down again.

The VFW supports the Honoring Veterans' Families Act, which would authorize VA to properly recognize the surviving spouse and dependents of our Nation's veterans. The VFW is also glad this bill would establish a retroactive effective date to properly recognize a spouse and dependent who is already buried with an eligible veteran, but lacks the proper recognition on the veteran's headstone. The VFW would, however, recommend that the Subcommittee align the effective date with a recently passed public law which would authorize VA to provide headstones for certain spouses and dependents who died on or about November 11, 1998.

The VFW supports the Veterans' Compensation Cost-of-Living Adjustment Act of 2019, which would increase VA compensation for veterans and survivors, and other benefits. The VFW is pleased to support any bill increasing COLA for veterans; however, we would prefer the COLA be made permanent and an automatic increase.

The VFW also supports the Enewetak Atoll Clean-Up Radiation Study Act. Those who wear the cloth of our Nation go into harm's way without hesitation, it is our duty to take care of the repercussions of such selfless service. This is one more example of military toxic exposures causing adverse health conditions which have been ignored too long.

The VFW also thanks the Committee for its attention in numerous roundtables on Enewetak Atoll and for fighting to secure those veterans the benefits they deserve.

The VFW supports the Veterans Valuing Our Widows and Widowers Act, which would transfer the Medal of Honor pension to surviving spouses. Medal of Honor recipients have made extraordinary sacrifices for our country and are rightfully awarded a special pension for their heroic acts. Their loved ones often forgo careers to become full-time caregivers. This means they become dependent on Medal of Honor pension to make ends meet; however, the Medal of Honor pension ends with the death of the recipient and their surviving spouses often do not qualify for VA benefits upon their death.

The VFW also supports the draft legislation to establish a grant program to conduct cemetery research and produce educational material for the Veterans Legacy Program. Perpetuating the life and memory of our fallen is one of the VFW's founding principles. The Veterans Legacy Program ensures that the memory and stories of the brave men and women buried at national cemeteries are preserved in perpetuity. The VFW is a strong supporter of this program and has worked with the National Cemetery Administration to improve and expand it.

Madam Chairwoman, this concludes my statement. I am happy to answer any questions you or the Members of the Committee may have.

[THE PREPARED STATEMENT OF CARLOS FUENTES APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Fuentes.

I would now like to call on Mr. Weidman from the Vietnam Veterans of America for 5 minutes.

#### STATEMENT OF RICK WEIDMAN

Mr. WEIDMAN. Thank you, Madam Chair and Ranking Member Bost.

The VVA strongly favors passing of 299 and—I often forget, because most of the time I don't need a mike, but I understand it is for the record—is this legislation is so long overdue that we can hardly stand it.

As you know, our membership exists and comprises exclusively of Vietnam Veterans. So this is an issue that is very hot with us. We need to clear up the wrong that was done in '97, without a shred of scientific evidence, I might add. We always have to come up with evidence that is compelling, but VA removed us from—the Blue Water Navy Veterans from the Agent Orange Act of 1991.

Now, the intent of the '91 act—and we know what we are talking about, because we worked with, on this side it was Lane Evans and it on the Senate side it was Senator Daschle, to get that bill written, and it was written and envisioned as to include everybody who served in the waters off Vietnam; not a particular coordinate, not a territorial seas necessarily, but anybody who served in the waters off Vietnam.

The scientific evidence is in fact there. The 2011 National Academy of Medicine report is crystal clear that it was there. The only reason why they didn't kick it up a notch, if you will, was they said they didn't know how much each person was exposed.

So we asked, we meaning AUSN, Association of United States Navy and Fleet Reserve, asked the chair of that panel, well, Doctor, can you explain to us what is a safe dose of dioxin? And her comment back was what we already knew, is there isn't a safe dose of dioxin. A harmful dose was at that time defined as 7 parts per billion, it is now 5 parts per billion. And when they reviewed the science having to do with Blue Water Navy they found that we were absolutely correct, that the desalinization units picked it up and concentrated the dioxin in the water many times, up through a hundred or even more times over, making that anybody who drank water on that ship or anybody who ate the food that was

prepared on that ship was in fact ingesting a significant dose of dioxin. And remember that it was happening every day for months. So the scientific evidence is there.

In terms of moving forward, we continue to have the position at VVA that if you were awarded the Vietnam Service Medal for service in a surface ship off Vietnam, then you should be in.

We would also urge the Committee to press the Secretary for implementation of the reports that have been pending and the recommendations on additional presumptives. It has been 3 years now and it needs to get done.

All of the stuff with Agent Orange, I would remind the chair and all present, that the mean average age of Vietnam veterans will be 73 come June of this year. The median age is a little bit younger; it is about 71 point something, but because of our exposures people are dying early. And in all of the presumptives and this group of people who have been harmed with toxic wounds needs to get taken care.

The last thing I want to say, even though there isn't a bill on it, is the Committee needs to be keenly aware that the so-called registries VA has are not registries; they are simply email lists or mailing lists for snail mail. What we need is a real registry where you can follow the health of people by coding their electronic health care record. While we wait for the new EHR to be implemented, that could take 10 or 15 years. What we need—they have three blank fields on the current EHR in use at VA. With three blank fields, 26 letters and zero through 9, you can come up with many hundreds of codings. So where somebody served, what branch they served in and their MOS, all can be coded, so that you can find out and do epidemiological work. That is exactly what the National Academy of Medicine was saying over and over and over again for the last 20 years is the VA and DOD do not mine the mountains of data they have on every doggone one of us. And I encourage the full Committee and this Committee to require VA to do that coding and start it now using the existing system.

I thank you very much for your patience and for your attention to these important matters today. Thank you.

[THE PREPARED STATEMENT RICK WEIDMAN APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Weidman, for your statement.

I would now like to turn to Mr. Nuntavong from The American Legion. You are recognized for 5 minutes.

#### STATEMENT OF CHANIN NUNTAVONG

Mr. NUNTAVONG. Thank you.

This year, Nina would have been married to U.S. Army Sergeant First Class Augusto Tito Pineiro for 10 years, they have three children, but on October 9th, 2017, Tito was riding a bicycle around 7:00 a.m. when he was struck by a vehicle heading in the same direction. He died at the age of 38.

Chairwoman Luria, Ranking Member Bost, and distinguished Members of this Committee, on behalf of National Commander Brett Reistad, representing 2 million dues-paying members living in every state in American territory, it is my duty and honor to

present The American Legion's position on pending legislation being discussed here today.

Shortly after Tito's death, he was cremated. His family plans on burying him in a private cemetery in Florida. This non-VA cemetery is the site where Nina intends to join her husband. However, current law does not allow the VA to add information about spouses and/or children to Government-furnished gravestones or markers in a non-VA cemetery.

Including family information on headstones and markers is a standard custom in our society; families of veterans should not be any different. H.R. 1126 is a commonsense bill that ensures veterans and their family members receive the support and recognition they deserve.

For over 100 years, The American Legion has advocated on behalf of our Nation's veterans, including the awarding of disability benefits associated with chronic medical conditions. Annually, veterans and their families are subjects in a debate regarding the cost-of-living adjustments. For these families, COLA is not simply an acronym, it is a tangible benefit that meets the needs of increasing costs of living in the Nation that they defended. The proposal in H.R. 1200 is simple, Madam Chair, this bill will increase compensation and pension benefits to those who need it most.

In this year's landmark Procopio decision, the Federal Circuit ruled in favor of Blue Water Veterans. Yes, they were exposed to toxic herbicides. Yes, service in the Vietnam War extended from the coast out to the sea. And, yes, VA must begin granting claims of veterans who suffer from the conditions set forth as presumptive under U.S. Code.

We are pleased that VA Secretary Robert Wilkie told the Senate that he would not ask the Department of Justice to appeal the decision, and we believe that Congress is doing the right thing for our Blue Water Veterans and their families by enacting into law what the Federal Circuit decided and what VA said it would not oppose. There should be no changes to other veteran benefits because Congress is implementing a court's decision. Congress should enact into law the broadest definition possible, and provide clarity and guidance for the expected VA regulations implementing Procopio, and thereby potentially avoiding further legislation over the definition that might needlessly delay the approval of VA claims.

Our veterans deserve no less, as they have waited patiently for more than 44 years, and we believe VA should begin to act even before H.R. 299 becomes law.

Like their Blue Water colleagues, servicemembers cleaning various nuclear testing sites during the 1970s and '80s were exposed to significant toxic exposures because of their duties. These individuals who participated in cleaning up these nuclear testing sites suffer from high rates of cancer due to their exposure to radiation and nuclear waste. They are currently unable to receive the same treatments and service-related disability presumptions that other radiation-exposed veterans receive from the VA. The American Legion believes that these veterans deserve the same benefits that U.S. law guarantees to other servicemembers impacted by their toxic exposures, and we believe that VA should be responsible for the care of these atomic clean-up veterans. We support H.R. 1628.

Ladies and gentlemen, let's give America's sons and daughters the benefits they have earned.

We thank Chairwoman Luria and Ranking Member Bost for their incredible leadership and always keeping veterans at the core of their mission. It is my privilege to represent The American Legion before this Committee. I look forward to answering any questions you may have.

[THE PREPARED STATEMENT OF CHANIN NUNTAVONG APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you for your statement.

I would like to now turn to Mr. Liermann from the Disabled American Veterans for 5 minutes.

#### **STATEMENT OF SHANE L. LIERMANN**

Mr. LIERMANN. Thank you.

Chairman Luria, Ranking Member Bost, and Members of the Subcommittee, on behalf of DAV's more than one million members, we thank you for the opportunity to present our views at today's legislation hearing on the Subcommittee of Disability Assistance and Memorial Affairs.

In our written testimony, we address all seven bills of concern for today's hearing and I refer you to our statement of record. This afternoon, I will be primarily focusing on the amendment in the nature of a substitute to H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019.

DAV strongly supports the amendment, which will help correct the injustice done to Blue Water Navy Veterans.

When VA implemented the Agent Orange Act of 1991, they determined that veterans who received the Vietnam Service Medal, to include those who served in the waters offshore, were exposed to Agent Orange. In 1993, a VA General Counsel opinion held that veterans with service in the waters offshore were exposed to Agent Orange.

In 1996, Congress passed the Veterans Benefits Improvement Act, which extended the official wartime period of service in Vietnam. However, a subsequent VA General Counsel opinion in 1997 misinterpreted that statute and determined only veterans who physically served in Vietnam would be granted a concession of exposure to Agent Orange. This is the precise moment when the VA started to explicitly exclude Blue Water Navy Veterans and negatively impact their access to VA health care and service-connected benefits.

And then again in 2002, the VA updated its manual, reiterating that exposure to Agent Orange was conceded only to those physically in Vietnam.

So, to clarify, from 1991 to 1997, veterans with service in the waters offshore of Vietnam, were considered to have been exposed to Agent Orange, as Congress intended. The decision to exclude Blue Water Navy Veterans was not based on any medical or scientific evidence, law, or congressional intent; it was based solely on their misinterpretation.

In 2006, the Court of Appeals for Veterans Claims held that VA's interpretation was incorrect. However, VA subsequently appealed

that decision to the Federal Circuit. In 2008, the Federal Circuit gave deference to the VA's interpretation, which continued to exclude Blue Water Navy Veterans.

As you know, during the 115th Congress Blue Water Navy legislation passed the House with a vote of 382-to-zero; however, the bill was not successful in the Senate. We are pleased that Chairman Takano and Ranking Member Roe have collaborated to bring H.R. 299 back before the Committee.

On January 29th, the U.S. Court of Appeals for the Federal Circuit in *Procopio v. Wilkie* overruled VA's previous misinterpretations and determined that service in the Republic of Vietnam includes the territorial waters within 12 nautical miles of the base line. H.R. 299 would protect Procopio's holdings that service in the Republic of Vietnam includes the territorial waters. This bill would use the same grid coordinates in the legislation approved by the House last year, which would extend beyond 12 nautical miles in some locations, particularly in the Mekong Delta.

We strongly support H.R. 299, as it is in alignment with DAV Resolution 33, which advocates that service in the Republic of Vietnam includes service in the territorial waters.

Tens of thousands of veterans, their families, and their survivors have been denied their earned benefits for decades. While it is way past due, it is time that we correct the injustice done to Blue Water Navy Veterans and provide protection of the Procopio decision by passing H.R. 299.

In closing, Madam Chair, I would like to note that H.R. 1200 would authorize a cost-of-living adjustment for veterans in receipt of compensation and pension, and for survivors of veterans in receipt of DIC, and provide an increase by the same percentage as Social Security effective December 1st, 2019. DAV supports H.R. 1200 and we are pleased that it does not include any language about rounding down the proposed COLA increase.

This concludes my testimony. I would be pleased to answer any questions you or Members of the Subcommittee may have.

[THE PREPARED STATEMENT OF SHANE L. LIERMANN APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you.

I would now like to call Mr. Butler from the National Academies of Sciences, Engineering, and Medicine for 5 minutes.

#### **STATEMENT OF DAVID A. BUTLER**

Mr. BUTLER. Chairman Luria, Ranking Member Bost, Chairman Takano, Ranking Member Roe, thank you for the opportunity to testify today. I am here in my capacity as a scholar in the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine, and as Director of its Office of Military and Veterans Health. Accompanying me is Dr. Ourania Kosti, Senior Program Officer in the National Academies' Nuclear and Radiation Studies Board, and Principal Investigator for the Radiation Effects Research Foundation Program, which provides support to a cooperative Japan-U.S. research organization that studies radiation effects in survivors of the atomic bombings of Hiroshima and Nagasaki.



The National Academies has a long history of advising the Federal Government on the health effects of radiation exposures in general and in radiation exposures resulting from military activities in particular, work that began in 1946 with a directive from President Truman. Since then, among other efforts, we have conducted reviews of the methods used to assign radiation doses to service personnel at nuclear weapons tests, an examination of the use of film badge dosimetry in atmospheric nuclear tests, studies of the mortality of military participants in U.S. weapons tests, and in 2003, a comprehensive review of the dose reconstruction program of the Defense Threat Reduction Agency.

The National Academies has also previously done dose assessments generated by the Federal Government for personnel exposed to radioactive materials as a result of their work in the Department of Energy's Hanford, Fernald, and Savannah River nuclear weapons production facilities.

The Office of Military and Veterans Health that I direct has analyzed data on the causes of death of participants in the Operation CROSSROADS atmospheric nuclear test series that took place in the Bikini Atoll in the Marshall Islands.

I have included a list of National Academies reports related to ionizing radiation exposure and radiation dose reconstruction in the materials submitted for the Subcommittee's reference.

Turning to the legislation in consideration in this hearing, H.R. 1628 outlines the parameters of the study that would allow for a more complete understanding of the radiation doses received by those involved in the clean-up operations undertaken at Enewetak Atoll from 1977 to 1980 in response to nuclear testing in the areas in the 1940s and '50s. It takes as its starting point the 2018 Defense Threat Reduction Agency dose assessment for military personnel involved in clean-up operations.

A radiation dose assessment, which is also called a dose reconstruction, is, in brief, a means of characterizing a person's received ionizing radiation dose through an accounting of exposure scenarios, exposure pathways, and uncertainties. Depending on the available information, a dose assessment may include some combination of direct or indirect measurements obtained, for example, by film badge or field survey instruments; and estimates of unmeasured parameters that are based on historical data, along with proxies for exposure, such as a subject's job and a subject's recollection of the tasks that they performed, the physics of radioactive materials, and human biology and physiology.

A radiation dose assessment often entails the calculation of the estimated upper-bound dose, that is the dose that would occur if all the uncertain elements of the analysis were set to the plausible value that would in combination yield the highest estimate.

The proposed study would address two primary questions related to the Enewetak veterans, whether information exists to conduct a revised or alternative radiation dose assessment that would consider exposures and exposure pathways that were not part of the 2018 radiation dose assessment, and whether conducting such a revised or alternative dose assessment is feasible and be likely to yield a substantively improved estimate of the radiation dose received by those who participated in the cleanup. If the answers to

those questions were yes, the study would go on to identify the sources of data for the new assessment, including a delineation of the assessment protocol; estimate the time and funding needed to conduct the assessment; identify the assessment's major sources of uncertainty and how such sources may affect the estimates generated; and identify the best means to carry out the new assessment.

The National Academies believes this is a scientifically sound approach to addressing lingering questions regarding the exposure of Enewetak veterans and that the results would allow veterans, their loved ones, and the Federal Government to make more fully informed decisions.

Thank you for your attention. Dr. Kostin and I would be happy to answer your questions.

[THE PREPARED STATEMENT OF DAVID A. BUTLER APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you very much to all of you for your statements. And I now recognize myself for 5 minutes for questions.

I would like to start with discussing the Blue Water Navy Act, H.R. 299, with the different VSOs that are present. And you can jump in or if someone particularly wants to speak more than once on the same question, feel free to let me know.

What are the current issues facing an aging Blue Water Navy population who seek disability benefits from herbicide-related diseases? Can you list, you know, some of the main health factors that they are experiencing and what is most prevalent among this population.

Mr. FUENTES. Really what it comes down to is they are sick and dying from the 15 conditions that are scientifically linked to Agent Orange. They really don't have the benefit of time, as Rick explained, and have been denied benefits for far too long. So we can't delay any further.

Mr. WEIDMAN. VA hasn't tracked what kind of illnesses Blue Water Navy has. Australians, they first discovered the anomaly that the Navy vets, the Australian Navy vets had higher cancer rates than the ground pounders. And so they commissioned the University of Queensland to look into it, and they went back and studied what was going on. And they discovered that it was through the desalinization units that their sailors were being poisoned and, because the desalinization units concentrated the dioxin many times over, they were getting cancers of the digestive tract mostly on much higher incidence than even the ground pounders.

So VA for a long time claimed that American ships do not do the desalinization using the same theory. Well, it turned out that not only did we do the same theory, it was the same units manufactured by W.D. Burrows and Son, and installed on the American ships and installed on the Australian ships.

So the history of mendacity, misleading, and confusion, shall we say, deliberate confusion, goes back a long way when it comes to Blue Water Navy and it is just time to do it.

Ms. LURIA. Yes.

Mr. WEIDMAN. Their families are suffering, et cetera, and it is time. And I thank you very much for moving forward on this issue.

Ms. LURIA. I agree with you wholeheartedly that it is time that we take action on this and we provide the benefits and the health care that these veterans deserve based off their service.

I would like to shift now to hear from the various VSOs. Do you think the VA is adequately prepared to begin providing disability compensation and health care benefits to Blue Water Veterans? And, you know, once this change happens by hopefully enacting H.R. 299, what do you think are the biggest barriers to making sure that people who have not previously received that care or that recognition of a service-connected disability or illness are going to have seeking that care?

Mr. FUENTES. They are not—at this moment, they are not. But, to their credit, Undersecretary for Benefits, Dr. Lawrence, has reached out to us to plan a way forward. And, frankly, the biggest challenge is to make sure that those folks who have been denied benefits and were denied in the past, and even their survivors, really are made whole and in a timely basis. So we don't want backlogs. And it is a way to get it done and we will work with VA to do so.

Mr. LIERMANN. I think one of the biggest problems they are going to be facing is from a development point of view. When a veteran establishes a claim, it goes through the development process before it goes to a rating RVSR to make a decision on the case, and for them to try to get the information on the location of the ship, was the veteran on the ship at the time it was exposed, that is probably going to be the biggest piece of this that has potential to slow it down.

DAV has also made recommendations to VBA that they should have started this process several months ago to help alleviate it when we get to this point, because that really is going to be, I think, one of the biggest hurdles; not making the decision, once they have determined if they were exposed and they have a disease, that is actually the easy part, the hard part is going to be the development in the determining where were they and were they considered exposed.

Ms. LURIA. Thank you. I can imagine it would be quite a complex thing tracing back through, you know, deck logs and service records and determining dates of where ships were located at specific times. So I see it as a complex task to identify this information for each individual veteran, so I agree that the groundwork should be started as soon as possible to make this more smooth.

And, you know, you have referred as well to some of the veterans who have been denied in the past. So I assume that many of these are known cases, yet there are some that are not known, because people haven't potentially presented themselves in the past in seeking a claim.

So how will you as VSOs seek to communicate and find these other individuals who may not have yet come forward thinking that potentially they could have been eligible for this benefit?

Mr. WEIDMAN. They need to pull the ship's roster and deck log and computerize them. It is not hard and, frankly, we are just not talking about that many ships. We made that recommendation and

I think a number of our colleagues represented here made the same recommendation to the VA 2 months ago just in case. And, if I was a betting man, I would bet that one of the reasons why they wanted to reserve the right to appeal and an extra 90 days is to get set up. And we also suggested they choose five regional offices, not some of the biggest ones, and immediately start staffing up there for regular claims and train those staff as to how to do these claims. And whether they have done it or not, I do not know, but we have recommended it repeatedly.

Ms. LURIA. Thank you.

I think I have gone over the time, so I will now call on Ranking Member Bost.

Mr. BOST. Thank you, Chair.

Dr. Butler, some veterans have voiced concerns that the method DOD used to estimate the potential dosage of radiation exposure at Enewetak clean-up veterans was unreliable or outdated. How would the NAS study under H.R. 1628, the Enewetak Atoll Clean-Up Radiation Study Act, differ from DOD's investigation in 2018 on radiation assessment—assessing the amount of dosage that they received?

Mr. BUTLER. Well, if the National Academies were asked to perform the study, we would form an expert Committee that would evaluate the DOD radiation assessment report. That Committee would examine the data and assumptions that went into the assessment, determine whether there were any gaps or alternative ways to characterize the exposure, and manage the uncertainties involved.

To draw its conclusions, the Committee might review a sample of individual dose assessments that were performed and evaluate those. That was the approach that we took in our 2013 review of DOD radiation dose assessments. Very importantly, we would look at how uncertainty was being factored into the analyses.

If the Committee identified alternative or additional data, or ways to more completely assess the doses, then it would offer recommendations on how to improve the assessments. For example, it might recommend that sampling be done from the veterans themselves to determine whether there are measurements that could inform a better-characterized exposure assessment.

Mr. BOST. So it has been 40 years since the cleanup. So how would you estimate—after 40 years, how in the world do you get back there and figure out, okay, this person was exposed to this much, or how do you do that?

Mr. BUTLER. For that question, I would like to defer to my colleague Dr. Kosti.

Ms. KOSTI. Thank you. So, indeed, any dosage construction relies on data and information that was collected in the past. So we would rely on badge measurements that were done in the past, field measurements, recollection of the veterans of where they were, what kind of tasks they were doing at the time. So all this information is past-looking, and it has its uncertainties, inherent uncertainties.

There are ways to do better analysis today to inform and add information to what already exists, and Dr. Butler measured one of

those by taking current measurements today with the consent of the veterans.

Mr. BOST. Okay, thank you.

Mr. Weidman, can you please briefly describe VVA's belief that the Agent Orange presumption period for veterans who served on or near Korean DMZ should begin in September 1st, 1967 instead of April 1st, 1968?

Mr. WEIDMAN. Because we believe that Agent Orange, frankly, was used wherever American troops were. It is just as simple as that.

And, incidentally, that is not limited to the DMZ in Korea. We believe they were used every place we had a military base, certainly in the Pacific, but also many places in the United States, like Edwards Air Force Base in Florida and et cetera. And most of those are not recognized and, frankly, the track record of being forthcoming on the part of DOD is not thrilling, shall we say. So more needs to be done with your colleagues in the Armed Services Committee in digging into it.

Thank you.

Mr. BOST. Madam Chair, I yield back.

Ms. LURIA. Thank you.

I now call on Chairman Takano for 5 minutes.

Mr. TAKANO. Thank you, Madam Chair.

Mr. Weidman, I am going to ask each of the VSO representatives to just answer this simple question, take about a minute to do it: can you tell the Committee how important it is for your members and our veterans that we get H.R. 299 passed into law?

Mr. WEIDMAN. Extremely important, top priority.

Mr. TAKANO. Mr. Fuentes?

Mr. FUENTES. It is the number one issue we hear about today.

Mr. TAKANO. Mr. Nuntavong?

Mr. NUNTAVONG. We are extremely—it needs to get done, Chairman.

Mr. TAKANO. And Mr. Liermann?

Mr. LIERMANN. Yes. Thank you, Chairman. Out of our over 1 million members, over 480,000 of them are Vietnam-era veterans, so this is a big priority and very urgent for our membership.

Mr. TAKANO. You can go a little further than a couple words, but just kind of give me some—the Committee the urgency.

Mr. LIERMANN. I have been representing veterans for about 21 years, we have been representing them at different VA regional offices in the Board of Veterans' Appeals for 5 years, and I can say this: it is a horrible feeling when you have to tell a veteran that no matter what we do they are not going to be eligible for that presumptive because they were on ship, they weren't in country. Unfortunately, we have had that experience over and over and over again over the last 20 years, because they are not being allowed. Those veterans are dying, their survivors are not entitled to those benefits that they should have been.

So, explaining it from that point of view from the service end, we see it continually every day, not just with our members, but the veterans and their survivors that we represent, and there has got to come to a point where it has just got to stop.

Mr. TAKANO. Thank you.

Mr. FUENTES. Mr. Chairman, if I may—

Mr. TAKANO. Go ahead, Mr. Fuentes.

Mr. FUENTES. Mr. Chairman, if I may add. We also talk to veterans every single day dying from rare cancers, prostate cancer, and these illnesses that are directly connected to Agent Orange. And the issue with not having presumptive is you are actually asking a veteran to go back the past 50 years and present some type of evidence that shows that they were directly exposed to Agent Orange or the ship that they were in in this case was in contact with Agent Orange.

Now, I will tell you, I was in Afghanistan in 2009 and I could never be able to present to you any evidence of where I was at and exactly what I was exposed to in 2009, and I can't even fathom how hard that is for our Vietnam vets.

Mr. WEIDMAN. Basically, if it is not on the presumptive list, you are not going to get a grant at the regional office level. Often you will get it on appeal to the Board if you have a good representative who builds a thorough case, but it shouldn't have to be this damn hard, because we know people were exposed.

Mr. NUNTAVONG. Men and women are dying every day, Chairman, and every day we wait is another veteran who may pass away from a presumptive that is not being granted to them currently. We can't wait anymore.

Mr. TAKANO. Madam Chair, I yield back.

Ms. LURIA. Thank you.

I now recognize Dr. Roe for 5 minutes.

Mr. ROE. Thank you, Madam Chair.

Look, we obviously know what the will of the House in the 115th Congress was, and I think you are going to know the will of the House in the 116th Congress. And by the way, Rick, you are correct, you do not need a microphone, I will say that.

[Laughter.]

Mr. ROE. You are loud and clear. So we know what that is, and I am with you, I am with you guys, it is time to quit talking about this and get this done. And I don't have anything more to say than that my frustration level is about here. We have talked this to death. We have found a way to pay for the Agent Orange exposure, we have done all the things anybody asked, the President will sign this into law in 2 seconds if he can get this in front of him. So let's get this done.

And I appreciate the Chairman, I think he has been right there with us the whole way. Thank you for that. And I know he is committed to get this out of our Committee before Memorial Day, I think, if we can find—I will yield to the Chairman.

Mr. TAKANO. Dr. Roe, with your support, and I know I have it, we are going to get this done by Memorial Day. And you and I and all of the folks at the table, we will go to the Senate in person, if we need to, and stand in the gallery every day until the Senate brings this to the floor and gets it voted out.

Mr. ROE. Thank you, Mr. Chairman.

I absolutely believe this. I think if you can get it on the Senate floor, a closer vote is not going to be a problem, and I think you will see 90 votes in the Senate.

So it is procedural. Carlos, I agree with everything you said. It is time to move on and get these benefits to these veterans when 500-plus of us are dying every day. We can wait it out and we will all be gone in not too long. So, if you do that—I think it is shameful that we didn't get it done last time and it is shameful we are not doing it right now.

Madam Chair, I yield back.

Ms. LURIA. Thank you. And I am grateful to all of you who participated today, the four panels, and also for Chairman Takano and Ranking Member Roe being here from the full Committee as well, to speak on this very important issue of the Blue Water Veterans.

I also wanted to thank the representatives from the VA. I appreciate that you stayed throughout all of the testimony and also heard how important this issue is for the Blue Water Veterans, and hopefully you will take that back to the Secretary and your leadership of what we discussed in this hearing today.

Lastly, I would also like to thank the Committee staff. I know that it took a lot of work and effort to bring this together and to bring all of our witnesses before us.

And I think, Chairman Takano, you motioned, you would like to—

Mr. TAKANO. Just real quick. Ranking Member Roe, I just think it is just serendipitous and so appropriate that this hearing is being presided over by a Navy veteran, the first woman veteran, Navy veteran to actually serve on our Committee, and that she commanded naval surface ships, and it just seems very appropriate to me.

So, thank you so much for your service, Ms. Luria.

Ms. LURIA. Well, thank you. And I would also like to offer the opportunity for Dr. Roe, if you would like to make any closing remarks.

Mr. ROE. Just very briefly. And, Carlos, once again, I couldn't agree with you more, there is no way on this earth I could prove where I walked around in Korea 40-something years later. I mean, I wasn't even sure where I was walking around at the time, much less 40-something years later.

So I agree with you, we are just going to have to make some assumptions. We have the data, as was pointed out, about who was on which ship. Let's get on with it. And I am ready to do it, I know the House is ready to do it, I think the Senate. I really do appreciate, more than you know, the shoulder that the VSOs have put behind this effort. I know it has been frustrating for the last 20 years to get these benefits to these men and women who served, and I salute you for that.

I yield back.

Ms. LURIA. Well, thank you. And thank you again to everyone for your time and for participating in the hearing today.

All Members have 5 legislative days to revise and extend their remarks, and include any extraneous material.

So, thank you very much and this hearing is adjourned.

[Whereupon, at 4:59 p.m., the Subcommittee was adjourned.]





## A P P E N D I X

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### Prepared Statement of Matthew Sullivan

Madam Chair and Members of the Subcommittee, I am pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on pending legislation affecting VA's programs. Accompanying me today are Kevin Friel, Deputy Director for Pension and Fiduciary, Veterans Benefits Administration; Dr. Patricia Hastings, Deputy Chief Consultant, PDHS, Veterans Health Administration; and Derrick Curtis, Director, Software Testing & 508, Enterprise Portfolio Management Division, Office of Information Technology.

#### H.R. 1126

H.R. 1126, the Honoring Veterans' Families Act, would permit VA to replace a Veteran's Government-furnished headstone or marker in a non-VA cemetery in order to add an inscription for a deceased spouse or eligible dependent child following the death of the spouse or child. VA would also be authorized to inscribe information regarding a spouse or eligible dependent child who has predeceased the Veteran on the Veteran's Government-furnished headstone or marker. The bill would define "non-VA cemetery" as a Veterans' cemetery owned by a State, or a State, local, tribal, or private cemetery. The provisions of the bill would be effective for deaths on or after October 1, 2018.

This legislation is consistent with a VA proposal in the President's Budget for FY 2020, and, as such, VA supports H.R. 1126, provided Congress can identify corresponding funding, and subject to some technical edits discussed below.

In recent years, VA has received an ongoing and steady interest by families to have information about a Veteran's loved one, beyond just general terms of endearment referring to a spouse, inscribed on the Government-furnished headstone or marker.

These headstones or markers would mark the gravesites of Veterans who are eligible for burial in a national cemetery but are not buried there, including gravesites in private and local government cemeteries as well as VA grant-funded Veterans' cemeteries.

H.R. 1126 would not expand eligibility for the headstone and marker benefit to spouses and dependents buried outside of a VA national cemetery (who, under current statutory authority in 38 U.S.C. § 2306 are not eligible for a headstone or marker of their own in local or private cemeteries). Rather, the bill would allow VA to inscribe information about a deceased spouse or dependent child on a Veteran's headstone or marker. The information would be included either when the Veteran's headstone or marker is requested (if the spouse or dependent child has predeceased the Veteran) or on a replacement headstone or marker (if the spouse or dependent child dies after the Veteran). Replacement is the most cost-efficient way to provide this additional inscription, as VA does not have resources to add inscriptions to pre-set headstones in cemeteries outside the national cemetery system.

However, we note that the text of the bill does not reflect certain changes made to title 38 by Public Law 115-407, signed by the President on December 31, 2018. First, the new law added subsection (i) to section 2306; therefore, the language proposed by H.R. 1126 should be added as subsection (j), not subsection (i), as proposed in the bill. In addition, Public Law 115-407 expanded VA's authority to provide headstones and markers for spouses and dependents in tribal Veterans' cemeteries, where previously VA no had such authority. In doing so, the law added a new term to the statute, "covered cemeteries," defined as national cemeteries, state Veterans' cemeteries, and Tribal Veterans' cemeteries. Because VA may now provide a marker for the unmarked grave of a spouse or dependent of a Veteran in one of these covered cemeteries, the need being addressed by H.R. 1126 is somewhat narrower than before. We would suggest utilizing the new term established by Public Law 115-407, by indicating that the focus of H.R. 1126 is to inscribe information about the

Veteran's spouse or eligible dependent child following the death of the spouse or child on the headstone of a Veteran who is not buried in a "covered cemetery."

We would also ask that the Committee consider making this provision effective for spouses and dependents of deceased Veterans whose deaths have occurred in the last 5 years. By creating this window, the bill would allow VA to process requests to provide a replacement headstone or marker to add information about recently-deceased spouses and dependent children (in cases where the spouse or child has recently died after the Veteran and the Government has already furnished the Veteran's headstone or marker).

VA estimates that this bill will result in costs to the mandatory Compensation and Pension appropriation of approximately \$780 thousand in 2020, \$3.0 million over 5 years, and \$6.8 million over 10 years.

#### **H.R. 1199**

H.R. 1199, the VA Web site Accessibility Act of 2019, would direct the Secretary of Veterans Affairs, not later than 180 days after the date of the enactment of the bill, to examine all Web sites (including attached files and Web-based applications) of the Department to determine whether such Web sites are accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act of 1973 (20 U.S.C. § 794d). Within 90 days of completing this study, the Secretary would be required to submit a report to Congress regarding the study. The report would have to include a list of each Web site, file, or Web-based application that is not accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act of 1973, as well as a plan to bring each Web site, file, or Web-based application that is not in compliance into compliance.

While VA agrees with the intent of this legislation, we do not believe it is necessary because it provides no new authority and because system owners already scan and remediate their Web sites as needed. Moreover, we have some concerns with the mandated schedule regarding conducting a review and developing a remediation plan. VA's Section 508 Office currently scans VA Web sites to identify non-compliant Web sites, files, and Web-based applications. The results of these scans are shared with the administrations and staff offices responsible for maintaining these sites. Although VA's administrations are actively engaged in remediation activities, there is no consolidated enterprise-wide plan to bring each Web site, file, or Web-based application into compliance with the requirements of section 508 of the Rehabilitation Act of 1973. However, we wish to emphasize that scanning and remediation are occurring. Finally, we believe that attempting to conduct a universal review within 180 days would be logistically challenging.

#### **H.R. 1200**

H.R. 1200, the Veterans' Compensation Cost-of-Living Adjustment Act of 2019, would require the Secretary of Veterans Affairs to increase the rates of disability compensation for service-connected Veterans and the rates of dependency and indemnity compensation (DIC) for survivors of Veterans, effective December 1, 2019. The bill would increase these rates by the same percentage as the percentage by which Social Security benefits are increased effective December 1, 2019. The bill would also require VA to publish the resulting increased rates in the Federal Register.

VA strongly supports this bill because it would express, in a tangible way, this Nation's gratitude for the sacrifices made by our service-disabled Veterans and their surviving spouses and children and would ensure that the value of their benefits will keep pace with increases in consumer prices.

VA estimates that this bill will result in costs of \$1.6 billion in FY 2019, \$10.0 billion over 5 years, and \$21.8 billion over 10 years. However, the cost of these increases is included in VA's baseline budget because VA assumes Congress will enact a cost-of-living adjustment each year. Therefore, enactment of this bill would not result in additional costs beyond what is included in VA's baseline budget.

#### **Draft Bill Establishing a Grant Program for Veterans Legacy Program**

This draft bill would provide VA with the authority to establish a grant program to conduct cemetery research and produce educational materials under the auspices of the Veterans Legacy Program (VLP). VLP supports the ongoing mission of the National Cemetery Administration to honor Veterans and their eligible family members with final resting places and with lasting tributes by providing engagement and educational tools and opportunities for the public to learn about Veterans' service and sacrifice. By engaging educators, students, researchers, and the public, VLP

proudly shares the stories of all those who served to help build an appreciation of what earlier generations have given to the Nation and to help individuals understand why national cemeteries are set aside as national shrines.

VA supports this bill which is similar to a proposal in the President's Budget for FY 2020. VLP seeks to continually develop learning products to ensure that educational opportunities for commemorating Veterans' service and sacrifice to our Nation are available to educators, students, researchers, and the public. To date, VA, working through the VLP, has awarded 16 separate contracts to conduct cemetery research and produce VLP educational material for use in elementary and high schools and the public to promote community engagement with Veterans' history. These contracts were awarded to procure a framework of digital and non-digital tools based on research that focused on Veterans interred at national cemeteries. In addition to developing biographies of Veterans, which are available on-line (including video presentations on YouTube), lesson plans and walking tours have been developed that can be employed without digital media/computers, so that teachers can print out a lesson plan and its accompanying resources to use with all students in the classroom or on-site at the national cemetery. VLP has produced over 573 Veteran biographies, 17 documentary films about Veterans, and 6 Veterans cemetery walking tours, all based on research conducted on-site in VA national cemeteries by students. Under the contracts issued to date, VLP will have engaged almost 9,000 students from kindergarten through high school, over 300 teachers and 200 undergraduate students, nearly 40 graduate students, and over 50 scholars.

The use of grants instead of contracts would be a more appropriate vehicle for VA to obtain educational tools and services for VLP in the future. In particular, the use of grants would allow VLP to adopt an awards cycle that more closely aligns with the academic calendar of universities and other learning institutions, which are largely expected to be the entities to produce VLP learning products. VLP could also use this vehicle to increase its flexibility in the size and scope of an award, thus making better use of its resources to increase the reach of the program beyond large universities to smaller groups that wish to engage with VA in enhancing the memorialization of Veterans.

This bill would incur no additional cost to VA, as funds are already allocated for VLP. Grants authorized by this bill would be an additional tool, beyond contracts, for the appropriate disbursement of existing allocated funds for VLP.

#### **H.R. 1628**

H.R. 1628, the Enewetak Atoll Cleanup Radiation Study Act, would direct the Secretary of Veterans Affairs to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to conduct a study on radiation exposure relating to the cleanup of Enewetak Atoll.

Subject to provision of funds to conduct this study, VA supports this legislation provided Congress can identify corresponding funding. Veterans who participated in the cleanup at Enewetak Atoll encountered low levels of radiological contamination and have a low risk of health problems. Today, residents of this atoll have very little or no intake of residual radionuclides, with annual radiation doses below U.S. averages.

However, many Veterans are quite concerned that exposure on Enewetak may have negative consequences for their health. This study may answer those concerns.

VA estimates the cost of conducting this study would be \$1,500,000.00 in FY 2019.

#### **H.R. 1826**

H.R. 1826, the Veterans VOW Act, would increase the Medal of Honor (MOH) special pension rate from \$1,000 to \$1,329.58 per month. It would also provide payment of MOH special pension to a surviving spouse of a deceased MOH recipient.

VA supports the bill to the extent that it increases the MOH special pension rate and sets specific parameters for surviving spouses' receipt of MOH special pension, provided Congress can identify corresponding funding. Extending the MOH special pension to surviving spouses allows a surviving spouse to receive the same amount as the Veteran would have received but for the Veteran's death. Extending the MOH special pension to surviving spouses accords with other survivor benefits VA offers such as Survivors Pension and special monthly pension for survivors.

VA would require clarification regarding one aspect of this bill: it is unclear if the remarriage limitations associated with DIC entitlement would apply to surviving spouses receiving the MOH special pension. For example, a surviving spouse who remarries prior to age 57 loses entitlement to DIC, but it is unclear whether a surviving spouse receiving the MOH special pension under this bill would also lose entitlement if they remarried.

VA estimates that this bill will result in mandatory costs of approximately \$1.7 million in 2020, \$8.8 million over 5 years, and \$18.7 million over 10 years.

This concludes my statement, Madam Chair. We would be happy now to entertain any questions you or the other Members of the Subcommittee may have.

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## **Prepared Statement of Melanie Brunson**

### **Introduction**

Chairman Luria, Ranking Member Bost, and members of the Subcommittee, thank you, on behalf of the Blinded Veterans Association (BVA), its national officers and members, for this opportunity to offer our views on H. R. 1199. BVA is the only congressionally chartered Veterans Service Organization that is exclusively dedicated to serving the needs of our nation's blinded veterans and their families. As such, we thank Congresswoman Luria for introducing and holding this hearing to consider legislation that addresses the needs of blind veterans for access to online information disseminated by the VA on par with their sighted peers.

The VA currently faces myriad challenges on multiple fronts, and many issues compete for the attention of its leaders. Not the least of these concern the capacity of VA's IT infrastructure to meet the demands resulting from ever-changing expectations regarding communications between federal government agencies and those who utilize their programs and services. Federal agencies are now expected to make ever-increasing amounts of information accessible through a rapidly growing number of media and devices, and VA has struggled to keep up with these demands. One area where VA has struggled the most is the area of compliance with accessibility guidelines for the design and dissemination of electronic information. We believe that this struggle will continue unless and until the issue of accessible communications becomes a priority of VA's leadership. We believe that by directing the VA Secretary to evaluate and report to Congress on the accessibility of VA's electronic communications, H.R.1199 will provide an impetus for VA's leadership to make the commitment that is needed to insure these issues will be addressed in a meaningful manner.

### **Why Accessibility Matters**

Statistics indicate that our nation's veteran population contains a growing number of individuals who have visual impairments. Studies conducted by the Veterans Health Administration in 2018 estimated that there were 131,580 legally blind veterans in the U.S. Just over 42,000 of these veterans had cases open with a visual impairment services team coordinator at that time. Further, these numbers are expected to grow as the U.S. population, including its veterans, ages during the next 20 years. Veterans who experience vision loss will want and need to access VA's websites, apps, kiosks, tele-health tools, claims process, and other benefits, programs, and services administered by the VA, both now and for the foreseeable future.

Already, since many veterans are comfortable with today's myriad technologies, they want access to all of the communications options the VA offers to other veterans. When concerns about the accessibility of websites, documents, and other equipment and media used to communicate with veterans are minimized or ignored, some of our nation's most vulnerable veterans, those with catastrophic disabilities, are left behind. When these veterans are denied access to information and services then, they are at risk for further aggravation of their disabilities, and in some cases, suicide. The longer we wait, the greater the risk.

### **What Is The Problem?**

In the paragraphs that follow, we will discuss some of the specific accessibility barriers that both blind veterans, and VA employees who have visual impairments, face on a regular basis. Before doing so, we do need to acknowledge that BVA has appreciated the efforts of VA's Section 508 compliance Office to correct problems promptly, particularly as they relate to VA websites. Both the staff, and contractors who work with them, are responsive when we alert them to the existence of accessibility barriers. Further, thanks to the involvement of that office and its contractors, most of the applications VA makes available to veterans at this time are accessible to and usable by veterans who use adaptive software on their computers and smart devices. The problems veterans face in accessing VA's new websites have decreased in number as well, though unfortunately, website access continues to be a major challenge. The following is a list of some of the most common and most serious

areas where VA falls short in its compliance with generally accepted accessibility guidelines.

VA's websites are generally the first point of contact veterans have with the Department. Therefore, the layout and content of those sites necessarily changes frequently. As a result, there are lots of occasions when things can go wrong. It is not uncommon for veterans to find that a web page that was easily accessed one day cannot be read, or even located during the next visit to the site. Some of the reasons this happens include:

- Tables that are not designed so they can be navigated cell by cell to allow users of screen-readers and magnification software to read them;
- Buttons that are too small, or hidden among other items, thus making them hard to locate;
- Elements (such as checkboxes and buttons) that are not properly labeled;
- Pop-Ups that interfere with the user's ability to navigate the web page by re-directing the focus of a screen-reader and cannot easily be dismissed;
- Forms that are not designed to allow a screen-reader or magnification program to be used while filling them out; and a problem specific to the va.gov website, Password requirements that exceed industry standards. This last item creates major challenges for those veterans (especially seniors and others with cognitive challenges) who need to create and remember unnecessarily complex passwords.

With regard to documents circulated by the VA, there has been some recent improvement, as VA now generally posts accessible Pdf documents on their public-facing websites. However, individuals, such as Veteran Service officers who assist veterans with claims, and VA employees, who need access to VA's internal documents, are not nearly so fortunate. VA still continues to utilize inaccessible PDF formats for much of its internal communications. This practice makes it very difficult for individuals who have disabilities that require them to use screen-readers to do their jobs and serve our veterans.

In our testimony at the joint hearing held by the full House and Senate Committees on Veterans Affairs earlier this year, we highlighted another long-standing access issue related to a vital VA website used by Veteran Service Officers. The TRIP Training site is itself compliant with accessibility guidelines. However, it is off limits to anyone who uses adaptive software because it must be entered through a portal that does not follow those guidelines. There is, as of this writing, no indication that this situation will be corrected any time soon.

In addition to website accessibility barriers, the kiosks VA has deployed at medical facilities nationwide present major access barriers for visually impaired veterans. These devices are supposed to be used by veterans to check in when they arrive for appointments, so they serve as the veteran's first introduction to the facility. A complicated or unsuccessful check-in process can impact the remainder of the veteran's experience. For a blind veteran, kiosks are, by their very nature, at best intimidating, and frequently unusable, due to their perfectly flat screens, and the absence of any tactile or audible features to give the potential user an idea of how to make them operate. Fortunately, such flat screens are becoming fairly common, and as they have been incorporated into other devices, such as ATM machines and voting machines at some polling places, industry has developed standards and best practices that make them accessible to people who have reading disabilities. To begin with, such kiosks generally have a 3.5mm headphone jack located in a prominent place on the machine, and insertion of a headphone into this jack activates an audio feature, which speaks information into the user's ear about where to touch on the screen in order to make it function. Such instructions often begin with a brief orientation to the screen and a brief tutorial on what to expect while using the machine. Repeat users can skip such introductory material if desired, and all users can adjust things like speaking rate and volume. Further, instructions for performing various tasks are also read out loud to the person wearing the headset. The machines also provide audible feedback whenever the user attempts to perform those functions, to indicate whether or not the attempt was successful.

Therefore, since kiosks can be quite usable, and they do serve a beneficial purpose for VA, we don't necessarily object to their deployment. What we object to is that the kiosks in use at VA medical centers do not comply with the industry standard accessibility guidelines described above. As recently as April, 2019, BVA received a complaint about the accessibility of the kiosk in the Washington D.C. VA Medical Center. First, plugging in a headset did not activate any audio features. Instead, the veteran who was attempting to use the machine stated that a sighted bystander told her that a notice had appeared on the screen which said, "If you are blind, press this button." One wonders how a "blind" person is supposed to know this information was visible on the screen. Once the person who did see it had pressed

the appropriate button, the instructions did begin and they were audible through the veteran's headset. However, the veteran continued to encounter problems, because unlike other similar devices, which require users to touch a particular area of the screen, such as the bottom right corner, the top left corner, or the center, in order to make selections or move through various functions, this kiosk required the user to locate and press particular buttons to perform each task. This required a degree of accuracy in locating and then pressing each button. Because this particular user had no vision, that degree of exactitude was not achievable. This is not an accessible kiosk. We should note that VA has recently rolled out new software for its kiosks which were supposed to improve their accessibility, and this veteran had hoped to have a much different experience as a result. Unfortunately, she was disappointed. BVA is also disappointed that VA's supposed accessibility improvements did not accomplish anything better than this. After four or five years of discussions with VA, about how to address these issues, and assurances that they would be addressed in the next software update, this veteran's report was extremely unsatisfactory. If VA is going to truly modernize its IT infrastructure, and expand its use of electronic communications to provide access to services, VA must pay greater attention to accessibility concerns beginning with the rollout phase of devices and software. Each time retrofits or replacements are required, there is also unnecessary expenditure of funds; funds that could be used to improve services to veterans. Incorporating accessibility in the first place is much more cost effective.

### **Conclusion**

Section 508 of the Rehabilitation Act requires federal agencies to ensure that all electronic and information technologies developed, procured, maintained, or used in the federal environment provide equal access for people with disabilities, whether they are federal employees or members of the public. Section 508 implementing regulations, together with web accessibility guidelines (WCAG) compiled periodically over the years by the Worldwide Web Accessibility Consortium, have sought to make it clear to federal agency personnel how to comply with these guidelines and regulations. Unfortunately, our experience indicates that while the VA has made significant progress toward compliance, the department is a long way from consistent compliance. BVA's national officers and staff meet regularly with staff of the Section 508 Compliance Office and they are generally responsive to the concerns we raise. They address the accessibility barriers we bring to their attention promptly. However, all too often, those same barriers, are erected again a few months later when websites are updated, or a new website is rolled out. The scenario that is most disturbing is when accessibility features are put in place, only to be broken the next time the site is updated. In fact, any time website administrators add tools, redesign features, or update content such alterations can render aspects of that site inaccessible, unless the industry standards for website accessibility are followed. The same can be said for software that is developed for use by VA. Best practices that insure accessibility are mature and widely accepted throughout the IT industry. VA must be encouraged to incorporate them into all aspects of its IT infrastructure sooner rather than later. BVA believes this can only be done effectively if the initiative comes from the Department's leadership. We urge Congress, therefore, to send a message, through passage of H.R.1199, that this is a priority deserving of leadership's attention.

Before concluding our discussion of this bill, there is one final question we want to raise. What will Congress do with the report called for in this legislation? It is our hope that the members of this Subcommittee, and the House and Senate Veterans' Affairs Committees, will exercise greater oversight of VA's compliance with accessibility guidelines in the future. While the report called for in this legislation can highlight what needs to be done, it doesn't make its accomplishment a foregone conclusion. We urge members of this Committee to hold VA accountable for addressing the barriers and implementing the plan set forth in any report Congress receives on the accessibility of VA's websites and other electronic communications to people with disabilities. To that end, we urge members of this Subcommittee, and the full Committee on Veterans Affairs, to require additional reports from VA on their progress toward addressing the accessibility barriers that are identified in their initial report to Congress. We recommend that VA be required to provide this Committee with updates at least every 180 days until all of the issues have been addressed. Further, we recommend that the Committee on Veterans Affairs seek regular reports from VA on its efforts to incorporate accessibility features into new web content, and to insure that updates to existing content are made in a manner that allows the content to be accessed by all members of its intended audience, regardless of disability. We believe this is a necessary step, if Congress wishes to insure that VA plans for accessibility when new initiatives are launched, rather than

adding accessibility features in only after receiving complaints from users. It would also give this legislation a greater impact on the effectiveness of future communications between VA and our nation's disabled veterans. We urge you to consider amending this legislation to include such measures, thereby putting VA on notice that Congress is serious about insuring compliance with accessibility guidelines, not only for the present, but for the long term.

Thank you, once again, for the opportunity to speak with you about the above legislation. If you would like any further information, please feel free to contact Melanie Brunson, Director of Government Relations, at mbrunson@bva.org. We look forward to answering any questions you may have.

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#### **Prepared Statement of Karl R. Horst**

Thank you, Chairwoman Luria for your service and leadership of this Subcommittee, as well as your Subcommittee's support of our nation's Veterans.

It is an honor and privilege for me to be here this afternoon. At the Congressional Medal of Honor Foundation, we have the privilege of working for our Nation's truest heroes, the Recipients of the Medal of Honor.

The mission of the Medal of Honor Foundation is to support the Medal of Honor Society, the Recipients, their outreach programs, and to preserve the legacy of the Medal of Honor through education, outreach and recognition. The Foundation also preserves the legacy of the Medal of Honor by promoting American values; specifically, the qualities of courage, sacrifice, selflessness, patriotism, citizenship, and integrity.

I am here today to reinforce and advocate for the Congressional Medal of Honor Society's position supporting H.R. 1826, "Veterans Valuing Our Widows and Widowers Act." The Society concurs with the language in the legislation outlining the payment of a special pension to the surviving spouses of Medal of Honor Recipients. In the absence of a surviving spouse, the Society believes the special pension should follow a succession to a designated next of kin caregiver to receive the special pension from the federal government.

The committee's initiative to amend H.R. 1826 is both timely and necessary. Today, there are only 71 living Recipients of the Medal of Honor and they are a rapidly diminishing treasure for our country.

Since January 15th this year, three more Recipients passed. The average age of living Recipients is 73. The average age of the 58 World War II, Korea and Vietnam Recipients is 79. In fact, 18 of the Recipients are more than 80 years old.

We at the Foundation have the opportunity to work with the Medal of Honor Recipients at events throughout the year. I have seen first hand how important spouses and caregivers are to the Recipients. In most cases, the caregivers are next of kin family members. There are some instances where the caregivers are not next of kin. However, to be clear, the Medal of Honor Society only supports designated next of kin caregivers be eligible to receive the special pension.

The spouses and caregivers work tirelessly to ensure the Recipients are able to participate in outreach events where they interact with the American public. In fact, spouses and caregivers allow Recipients to travel and participate in outreach programs far beyond the normal age where most Americans retire and limit their travel. The Recipient's stories of courage and valor in combat and their compassion for their fellow Americans are inspiring to all who have the opportunity to come into contact with them. Their spouses and next of kin caregivers help make that possible and this legislation is the appropriate support for them and for the Recipients. The Society feels this special pension is so important that the Society provides a one-year continuation of this compensation to ease the burden on surviving spouses and next of kin caregivers.

Thank you again for this opportunity to be here today. I am happy to take your questions.

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#### **Prepared Statement of Allison Adelle Hedge Coke**

Chairman Takano, Subcommittee Chair Luria, Ranking Member Roe, and Members of the Subcommittee:

Thank you for this opportunity to testify before you today. My name is Allison Adelle Hedge Coke and I am here to testify on behalf of the University of California Riverside in support of the draft bill to permit the Secretary of Veterans Affairs to

establish a grant program to conduct cemetery research and produce educational materials for the Veterans Legacy Program. I am a poet/writer and Distinguished Professor of Creative Writing within the College of Humanities, Arts, and Social Sciences at UCR and the Principal Investigator of the Along the Chaparral: memorializing the enshrined Legacy Program project.

We, as human beings, live in narrativising culture/s. If you can imagine story as a spherical, continually evolving multidimensional entity, that we in respective cultures intersect with in seasonal, tribute, and on as need to know basis extrapolations, and throughout time co-create story fabric to continually educate and memorialize our knowledges, cosmogonies, and histories, it is easy to deduct that story and culture are inextricable and are the common thread of knowledges worldwide.

The site we are working with, Riverside National Cemetery, represents a critical dimension of life in our region and its intersections nationally and globally. It represents honor and service, the ulterior hope for non-conflict, for peace, local, regional, national and global peace, and the hope for greater remarkable lives that continually add to the story and whereas the surrounding populations have at stake value from kinships interred there, from community relationships and temporal markers that give us reason to work together to do better in this world as human beings.

Bringing UCR students undergraduates and MFA/PhD candidates and recent alumni into the classrooms to foster this programming encourages K–12 students to look to education as a solution to economic deprivation and greater success in their futures and has also encouraged K–12 teachers, TAs and substitutes to seek graduate degrees in the short time we have been implementing the program. In almost every classroom, a good third of the youth have significant ties to the cemetery they may not realize until the project is on their desk and then give themselves to discovery of family and neighborhood ties they belong to and are represented through in this site.

Story creates culture, it teaches us who we are and how to be in the world and we co-create the entity with our own live experiences and knowledges from those who came before us and who lead us in our futures. The Legacy Program delivers this terrific meeting of story and culture to the university, to K–12 schools, to the surrounding cultures, communities, that make up our region and homes us in knowledge we glean from the site and our storying of these lives.

Our region includes nineteen Indigenous nations. The site of the cemetery includes historical and contemporary relevance to Luiseno, Tongva, Cahuilla, Serrano, and numerous other peoples, including Native Veterans and dependents interred from nationals throughout the hemisphere and island nations. Native nations have a very high rate of military service to the United States and, of course, a continual infinite commitment to protecting the homelands of original peoples these nations belong to.

The region is also long-term homelands to Latino/a/x, Chicano, Califas, Hispanic and Luso communities, also bearing a very high rate of military service nationally whether from generations that have lived here more traditionally to new citizen immigrants from Latin American countries who often dutifully serve to demonstrate their belief in the citizenship, as can be recognized by service from people originally from island nations who have also become citizens and have served at higher rates than other communities within our region.

It is fair to say that in addition to commitment to original homelands and citizenship, due to economic hardships endured within these communities, the rate of service is also higher within these and other communities represented in this site. It is fair to add that in times of conflict, some of these communities have been culled fully for frontline service, which includes Casa Blanca community of Riverside, whereas the first Medal of Honor recipient, and first interred person, reinterred from an earlier, segregated burial to be honored at rest in the Riverside National Cemetery, Riverside's own Ysmael "Smiley" Villegas, was born into and lived until he was killed in action in World War II.

In collaboration with the Veterans Legacy Program of the U.S. Department of Veterans Affairs, National Cemetery Administration, and in tribute to those interred at Riverside National Cemetery, to address and begin to interpret the story of Riverside National Cemetery, Along the Chaparral: memorializing the enshrined project services have included creation of an interactive GiS Web App and cutting edge (.7 of an inch aerial filming) digital mapping for the Riverside National Cemetery (RNC) site with populated points affiliating hundreds of resulting K–12 tribute stories to gravestones in the site, with informational overlays decoding the site's rich construction, monuments, history and contemporary notes of interest, including Native American presence and intentional encoding with flora related to military



life, and a search and sorting system that highlights significant variables, including honors and citations received.

We have already published a selected works anthology of over 70 K–12 student works. We produced two documentary film archives, including a making of the project documentary of participating K–12 students and teachers, UCR students, faculty, and Veterans, and eight portrait vignettes with survivors of K–12 student story subjects interred at RNC.

We have produced five K–12 student performances and a nationally/internationally broadcast radio play memorializing the enshrined at RNC and are working with RNC to launch the first Legacy Day at Riverside National Cemetery in the first week of October 2019.

We also produced dozens of lesson plans during this period and have a very good handle on a curriculum base. To date, we have worked successfully and collaboratively with over 2700 K–12 students in approximately 100 classrooms (six to eight sessions each class) in several public-school districts in our city and county and with Sherman Indian High School, whereas the project also produced an ongoing related Veterans mural project.

Too, the project fostered an understanding for UCR Tom s Rivera Library research collections to serve survivors, and next of kin. This adds to public access of those items, allows safe housing of articles, allows RNC to have a place to hold, and allows UCR to meet storytelling of Riverside County Inland Empire Research Librarian Goals.

The project is web-housed on <<https://alongthechaparral.ucr.edu>>.

The pilot project was a result of bridging partnership from UCR to Riverside Unified School District, Beaumont Unified School District, Temecula Valley Unified School District, Sherman Indian High School and regional efforts and from February 2018–November 2018 included K–12 tutelage and interface and programming with roughly 2000 K–12 students and 12 interred survivors and the following persons and entities were engaged within the project:

UCR Graduate Student Fellows:

- Isabela Agosa, MFA Candidate Creative Writing
- Clark Barclay, MFA Candidate Writing for the Performing Arts
- JT LaChausse, MFA Candidate Creative Writing
- Christiaan Clark, PhD Candidate Digital Composition
- Ian Galbraith, PhD Candidate English
- Joanna Greenberg, MFA Candidate Creative Writing
- Katy Gurin, MFA Candidate Creative Writing
- Jessica Gutierrez Masini, PhD Candidate Ethnomusicology
- Robyn Johnson, PhD Candidate English
- Cristina Leyva, MFA Candidate Experimental Choreography
- Josh Little, PhD Candidate History
- Will Madrigal, PhD Candidate Ethnic Studies
- Lauren Mauldin, MFA Candidate Creative Writing
- Alicia Mosley-Marks, MFA Candidate Creative Writing
- Daisy Ocampo, PhD Candidate History
- Michael Robinson, MFA Candidate Writing for the Performing Arts
- Jasmine Smith, MFA Candidate Creative Writing
- Chelsea Sutton, MFA Candidate Creative Writing
- Kathleen Taylor, MFA Candidate Creative Writing
- Fernanda Vidaurrazaga, MFA Candidate Creative Writing
- Amanda Wixon, PhD Candidate History

UCR Undergraduate Fellows:

- Riann Kaibetoney, Global Studies
- Harley Grow, Theater, Film, and Digital Production

UCR Alumni Fellows/K12 Teachers/School Staff:

- Ashanti Anderson, Alumna, UCR MFA Creative Writing
- Jalyn Barnard, Martin Luther King Jr High School, RUSD
- Amie Charney, Alumna, UCR MFA Creative Writing,
- Chaparral High School, TVUSD
- Karlene Clifford, School Counselor, SIHS
- Carol Damgen, Alumna, UCR MFA Creative Writing
- Don Forhane, Chaparral High School, TVUSD
- Julie Frias, Gage Middle School, RUSD
- Sonja Grover, Chaparral High School, TVUSD
- Travis Hedge Coke, Alumnus, UCR MFA Creative Writing

- Kevin LeDuc, Martin Luther King Jr High School, RUSD
- Kolkakada “Julie” Pheng, Alumna, UCR Theater and Film
- Paige Polcene, Highland Academy, BUSD
- Christine Pollitt, Gage Middle School, RUSD
- Leslie Robertson, Central Middle School, RUSD
- Lorene Sisquoc, Cultural Traditions and Museum, SIHS
- Jasmine Smith, Lead Teacher Highland Academy, BUSD
- Riley Takano, Martin Luther King Jr High School, RUSD
- Abel Valencia, Alumnus, UCR Theater and Film
- Carol Yarborough, Central Middle School, RUSD

UCR Staff:

- Kat Koziar, UCR Data Librarian, Point Person for Grant Projects, Along the Chaparral Program Coordinating Partner
- UCR Research Librarians Brian Geiger & David Rios
- UCR Alumni James Cabrera & Kyle Gebelin, and Charles Farrar, Silvana Payne & Teresa Salvato
- Joshua Gonzales, Native American Student Programs, Director
- Kathleen DeAtley, Performing Arts College, CHASS support staff members
- ArtsBlock staff, Linda Christopher & Carolyn Power, RUSD

Vendors:

- Shane Brown, Mike Cohen, Royce Sharp & Cati Porter, Inlandia, Aerial Graphics, Esri

UCR Co-Investigators and Mentor Professors:

- Assistant Professor Emily Rapp Black, Co-PI, Memoirist, Creative Writing
- Assistant Professor Gerald Clarke, Co-PI, Cahuilla Tribal Council Member, Artist, Ethnic Studies
- Professor Katie Ford, Co-PI, Poet, Creative Writing
- Associate Professor Rebecca “Monte” Kugel, Co-PI, History
- Assistant Professor Wesley Leonard, Co-PI, Indigenous Languages Linguist, Ethnic Studies
- Associate Professor Jaqueline Shea Murphy, Co-PI, Indigenous Dance
- Associate Professor Robert Perez, Co-PI, Latino and Indigenous Studies, Ethnic Studies
- Associate Professor Michelle Raheja, Co-PI, Native Literature, Film, Visual Culture, English
- Associate Professor Jonathan Ritter, Co-PI, Latino Ethnomusicology, Music
- Distinguished Professor Susan Straight, Co-PI, Novelist, Memoirist, Creative Writing
- Distinguished Professor, Rupert Costo Chair of Indian Affairs, Clifford Trafzer, Co-PI, History
- Distinguished Professor, Principal Investigator & Director, Allison Adelle Hedge Coke, Poet, Writer, Performer, Filmmaker, Narrative Medicine Practitioner

From December 15, 2018 to this date, in the first year of a new contract, dating December 15, 2018 - December 14, 2019 (with a second year from December 15, 2019 - December 14, 2020 optional), the new contract currently includes the participation of the following persons and entities:

UC RIVERSIDE in Collaboration with the Veterans Legacy Program of the U.S. Department of Veterans Affairs, National Cemetery Administration, and in tribute to those interred at Riverside National Cemetery Along the Chaparral: memorializing the enshrined recently entered into a new two-year project in collaboration with Riverside Unified School District, Beaumont Unified School District, Sherman Indian High School and extended regional community efforts and includes K–12 tutelage and interface and supporting programming beginning with (to date) 700 K–12 students:

UCR Graduate Student Fellows:

- Christiaan Clark, PhD Candidate Digital Composition
- Brenda Delfino MFA Candidate Creative Writing
- Nicole Furtado, PhD Candidate English
- Joanna Greenberg, MFA Candidate Creative Writing
- Celeste Jackson, PhD Candidate English
- Cristina Leyva, MFA Candidate Experimental Choreography
- Josh Little, PhD Candidate History
- Alicia Mosley-Marks, MFA Candidate Creative Writing

- Jessica Gutierrez Masini, PhD Candidate Ethnomusicology
- Beyaja Notah, PhD Candidate Ethnic Studies
- Daisy Ocampo, PhD Candidate History
- Crystal Salas, MFA Candidate Creative Writing
- Jasmine Smith, MFA Candidate Creative Writing
- Chelsea Sutton, MFA Candidate Creative Writing
- Fernanda Vidaurazaga, MFA Candidate Creative Writing
- Amanda Wixon, PhD Candidate History

UCR Alumni Fellows/K12 Teachers/School Staff:

- Jalyn Barnard, Martin Luther King Jr High School, RUSD
- Karlene Clifford, School Counselor, SIHS
- Carol Damgen, Alumna, UCR MFA Creative Writing
- Julie Frias, Gage Middle School, RUSD
- Jessica Jimenez, Martin Luther King Jr High School, RUSD
- Travis Hedge Coke, Alumnus, UCR MFA Creative Writing
- Kevin LeDuc, Martin Luther King Jr High School, RUSD
- Paige Polcene, Highland Academy, BUSD
- Christine Pollitt, Gage Middle School, RUSD
- Lorene Sisquoc, Cultural Traditions and Museum, SIHS
- Jasmine Smith, Lead Teacher Highland Academy, BUSD
- Riley Takano, Martin Luther King Jr High School, RUSD
- Courtney Temple, Martin Luther King Jr High School, RUSD

UCR Undergraduate Fellows

- Production Assistants: Johnny Moon, Jiasi Lai (Emily), and Harley Grow Hernandez.
- Emily Clarke, a Cahuilla poet and undergraduate in Creative Writing joining us to provide K–12 Fall classroom outreach, near her home, in Anza schools.

UCR Staff:

- Kat Koziar, UCR Data Librarian, Point Person for Grant Projects, Along the Chaparral Program Coordinating Partner
- UCR Research Librarians Brian Geiger & David Rios
- Joshua Gonzales, Native American Student Programs, Director
- Kathleen DeAtley, Performing Arts College, CHASS support staff members
- ArtsBlock staff, Nicolay Masov and Amy Metcalf
- Pr. Sergio Rey, Public Policy, Director of Geospatial Sciences, Center for Geospatial Sciences

Training session by:

- Rebecca “Monte” Kugel, Associate Professor History

Radio hosting by:

- Robert Perez, Associate Professor Ethnic Studies

Vendors:

- Shane Brown, Mike Cohen, Aerial Graphics, Esri & Cati Porter, Inlandia

UCR Co-Investigators and Mentor Professors:

- Associate Professor Emily Rapp Black, Co-PI, Memoirist, Creative Writing
- Professor Katie Ford, Co-PI, Poet, Creative Writing
- Assistant Professor Wesley Leonard, Co-PI, Indigenous Languages Linguist, Ethnic Studies
- Assistant Professor Keun-Pyo “Root” Park, Co-PI, Filmmaker, Theater, Film, Digital Media
- Associate Professor Michelle Raheja, Co-PI, Native Literature, Film, Visual Culture, English
- Associate Professor Jonathan Ritter, Co-PI, Latino Ethnomusicology, Music
- Distinguished Professor Susan Straight, Co-PI, Novelist, Memoirist, Creative Writing
- Distinguished Professor, Rupert Costo Chair of Indian Affairs, Clifford Trafzer, Co-PI, History
- Distinguished Professor Principal Investigator & Director, Allison Adelle Hedge Coke, Poet, Writer, Performer, Filmmaker, Narrative Medicine Practitioner

Along the Chaparral: memorializing the enshrined offers special thanks to:

Bryce Carpenter, Program Manager, Legacy Program, National Cemetery Administration, U. S. Department of Veterans Affairs; Peter Young, Director Riverside National Cemetery; Craig Arsell, Assistant Director Riverside National Cemetery; Adriene Benton, Assistant Director Riverside National Cemetery; Beverly Newsome, Riverside National Cemetery; Paul Adkins, Riverside National Cemetery Support Committee; and Daisy Tate, Veterans Supplemental Support.

Riverside Unified School District support team Linda Christopher & Carolyn Power UCR project support teams, including Randall Black, Lauren Savord, Ursula Prins, Sharon Shanahan, Regina Hazlinger, Nelda S Thomas, Linda Phi-Nguyen, Ryan Lipinski, Cindy Williams, Kiril Tomoff, Stephanie May and Robert Chan.

UCR Department and Centers, including chairs, advisors, and directors of the MFA in Creative Writing and Writing for the Performing Arts, Creative Writing, Dance, English, Ethnic Studies, History, Indigenous Studies, Latino Studies, Music, Theater, Film, and Digital Production, California Center for Native Nations, Native American Student Programs, UCR Veterans Resource Center, Riverside Unified School District, Beaumont Unified School District, Temecula Valley Unified School District, Sherman Indian High School and all other participating K-12 schools and communities and to King High Remembers oral history programming.

To the fantastic youth community that we have the privilege of serving and to each and all of our collaborators.

These projects have experienced immense success. They have served and are serving the greater community.

The relative products, our project creates are specifically intended to memorialize, and honor Veterans and dependents interred. The narratives highlight the lives before, during, and (potentially) following service within the military. These lives are essential microcosms and macrocosms of all that is citizenry of the United States with an assembly of diverse ethnicities, walks of life and temporal era. The multitude of nearly 300,000 graves hold the remains from service in numerous conflicts and serve an area representing a 70-mile physical radius around Riverside National Cemetery. A short visit to the site (in person or online) is demonstrative of the wealth of potential life narrative from those first interred to burials from as recently as this week.

Villegas' placement in the Riverside National Cemetery encourages public respect and keeps him in fresh memory. Leadership groups, such as the Mexican American Historical Society, on what would have been his 90th birthday (2014), honored Villegas on site.

His son came to the recent Medal of Honor Day tribute at Riverside National Cemetery and two of our K-12 students read from their tribute story to honor him during the same ceremony.

<<https://www.pe.com/2014/03/15/riverside-medal-of-honor-recipient-honored/>> He is memorialized in sculpture across from City Hall, on the promenade in Riverside.

<<http://www.riversideca.gov/mayor/pdf/inclusive-community-statement.pdf>> His position in the cemetery remains a constant sign of respect. With his final resting place highlighted in Riverside National Cemetery, he and his courageous sacrifice will never be forgotten.

The story of Villegas' life is valued and brings to mind the local 20-year-old soldier, nicknamed Smiley who gave his life while leading his squad during World War II, who was struck and killed on the Ville Verde Trail while singlehandedly emptying out five enemy foxholes with fortitude and honorable field competence and by his undaunted leadership, under heavy artillery, encouraging his troop to continue ahead.

Cherryie C Hein, PVT US Army, her Veteran husband Henry Gayhart Hein and their Veteran son are all interred at this site. Cherryie was a Cherokee Nation Citizen from Tahlequah Oklahoma who attended Sherman Indian School in Riverside, California before enlisting. After her service and marriage, she and her husband spent their post-service careers working for the VA Hospital. She is one of many interred people at the site who has a relationship with Sherman and our participating students there.

Hannah Fixico, a groundbreaking Rosebud Sioux woman who served honorably in the Navy during WWII and lived in Bell (an incorporated township in Los Angeles), is interred here.

There are scores of fascinating individuals, of heroes of all types in this respected place. Most people of a certain age remember the song, "The Lion Sleeps Tonight." The Tokens member, Mitch Margo, was only fourteen years old when he and his buddies recorded the song. He later served in the Army (1969- 1972) and was a life-long artist, musician, composer, and producer. < <http://www.latimes.com/local/obituaries/la-me-mitch-margo-20171201-story.html>>

Margo was recently laid to rest, as well, in Riverside National Cemetery, after passing away at age 70. He should be remembered, not only for one act or one achievement, but for his life.

Dorothy “Dottie” Ellen Ehlers, widow of Walter D. Ehlers, medal of Honor Recipient who served at Omaha Beach on D-Day (buried Riverside National Cemetery 2014) was laid to rest with her husband in

Riverside National Cemetery on January 5, 2018. She was an accomplished seamstress, quilter, doll maker, pianist, and homemaker, as well as a devoted wife and mother. By invitation, Medal of Honor recipient Walter D. Ehlers (1921 - 2014), son Walter “David” Ehlers Jr., daughter Catherine Ehlers, and Mrs. Dorothy Ehlers met with Walt Disney after personal remarks at a special presentation of “Great Moments with Mr. Lincoln” on Disney’s last day to officially visit the Magic Kingdom. Ehlers later served as a Disneyland Security officer in the early 1980’s. His remarks, when invited to speak to school children on D-Day, always included, “It was 60 times worse than Saving Private Ryan. <https://www.disneyavenue.com/2016/10/the-story-of-walt-disneys-final.html>

<https://www.youtube.com/watch?v=QBJ6BOEb-aI>

Our Pacific Island, Asian and Asian-American community is vibrant and the cemetery represents many diverse features of this great population, as well. Including, Indigenous Pacific Islanders, Japanese- American, Chinese-American, Korean-American, Pinay/Pinoy and many more diverse communities who include long-term citizenry and service and more recent immigration and service.

The challenges faced within these communities include internments of families and property seizures, during wartimes, due to prejudices, fears, and misunderstandings of these communities yet this national cemetery demonstrates the resiliency and commitment to honor and pride of the community.

Including that demonstrated through the story of James Mayeda, PFC US Army (1920–2015), who was born in Brawley, California, lived in Riverside most of his life, and was interned at a Japanese-American internment camp in Poston Arizona during World War II, where he met his future wife, Helen Tomiko Mayeda (originally from San Bernadino), who he later married and then enlisted in military service.

They spent 72 years together, she passed on February 15, 2015 and is interred in Riverside National Cemetery and he followed her soon after on March 1st, 2015 and joined her at the same cemetery.

UCR houses an archive of Tuskegee Airmen and there are several of that famously honorable cadre interred in this site that make remarkable subjects of story and critical studies of race relations and pride. One of our participating graduate fellow’s mother unexpectedly died during our pilot year project. An African American woman who was a World War II Veteran, who served in Europe sorting mail for active duty soldiers in the field, ran a soul food restaurant, and a dress shop, and was a great singer and was interred in the site during our pilot year. PFC Catherine “Julia” Harris.

K–12 teachers, participating UCR alumni and K–12 students often unexpectedly lost parents, grandparents, aunts, uncles, and neighbors during our project and these stories also represent the continual connections national cemeteries have to their surrounding communities and the story of life represented in each.

These are all remarkable people; easily relatable. The narratives of the lives revered here make excellent sources for stories for the K–12 students to research and write and moreover to know and share. To learn the value of factual research, to craft engaging factual story, to work in innovative storytelling media, to revise and edit and make publishable works, to satisfy so many goals in education and to unite the youth with a nearby host university and the site that the story is reamed from and tribute toward to extend the memory of these Veterans and their dependents for all time.

Challenges with contract versus grant include the university system in CHASS, formulated to address a more typical faculty grant system, whereas calls for proposals give a generous length of response and proposal submission and the calls are released to coincide well within an academic program year. The initial Legacy Program call came during Winter holiday, whereas to step up as PI, I was left to create the contract without regular support of primary contacts within the university. The second call also came within a holiday week in November, so to write both contract proposals, my major holidays in 2017 and 2018 were sacrificed and I was without the ability to continue planning dialogue with participating K–12 schools, also on holiday. Too, the time given to allow our established system to function was so unusual to the university research financial officials, some were left in disbelief and dutifully pressed to meet the unexpected demand. unexpected demand.

If the university has a grant, opposed to a contract, the system is set up as a draw down for a grant, so at the end of each month, the university has a draw down electronic system service. In a contract the payment to the university is not paid until the end of the project. Thus, the grant would allow for more fluid and regular payments and service paid as served and would allow greater ease of ability of institutional service.

A grant program would solve most, if not all of these dilemmas and ease our collaborative work.

Mr. Chairman, I know that you are a strong advocate for Veterans, for quality education, a great friend to UCR, to universities everywhere, and UCR and I truly thank you for all of your support. I know you are a champion of Veterans and have worked diligently to support UCR Veteran students and the Veterans Legacy Program. Our community sends their gratitude for meeting with our student Veterans and allowing us opportunity to share a bit about this program with Randy Reeves, the Under Secretary for Memorial Affairs. Again, UCR and I thank you for your efforts.

I would be delighted to answer any questions you may have. Thank you.

With respect,

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### Prepared Statement of Carlos Fuentes

Chairwoman Luria, Ranking Member Bost, and members of the Subcommittee, on behalf of the women and men of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on legislation pending before this Subcommittee.

#### **H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019**

The VFW thanks this Subcommittee and its staff for your devotion and hard work to ensure Blue Water Navy veterans receive the benefits they have been wrongfully denied for more than a decade. The VFW is glad to see the United States Court of Appeals for the Federal Circuit recently reversed a years-old ruling that paves the way for the restoration of benefits for some 90,000 aptly named Blue Water Navy veterans from the Vietnam War. We also thank Secretary of Veterans Affairs Robert L. Wilkie Jr. for recommending that the Department of Justice not appeal the decision.

The case, *Procopio v. Wilkie*, was supported by the VFW and a number of other veterans service organizations and advocates. It had Secretary Wilkie being sued by Navy veteran and VFW Life Member Alfred Procopio Jr., who was denied service connection for prostate cancer and diabetes mellitus because he never stepped foot on dry land or served within Vietnam's inland waterways. Mr. Procopio was assigned aboard the aircraft carrier USS *Intrepid*, which was stationed within 12 miles of Vietnam's coastline. Both of his illnesses are listed among the Department of Veterans Affairs' (VA) 14 presumptive diseases associated with exposure to Agent Orange. By a 9-2 decision, the appeals court ruled Mr. Procopio was entitled to benefits and provided relief for Blue Water Navy veterans.

While the VFW is pleased with the ruling, the decision can be challenged and overturned in the future. Congress must pass H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019, to make certain Blue Water Navy veterans never have their benefits taken away again.

The Blue Water Navy Vietnam Veterans Act of 2019 also includes the extension of much needed benefits for Korean Demilitarized Zone (DMZ) and Thailand veterans. The VFW supports expansion of benefits for Korean DMZ veterans who suffer from diseases and illnesses directly linked to Agent Orange exposure. While many of these veterans receive presumptive disability compensation for their service-connected disabilities, hundreds of them are left out despite clear congressional intent for them to be included. This legislation would provide them the benefits they have been unjustly denied.

This legislation would also provide benefits to children suffering from spina bifida because of their parents' exposure to Agent Orange while serving in Thailand during the Vietnam War. Spina bifida is a debilitating birth defect, which has been found to be more prevalent among children of veterans exposed to Agent Orange. Children of Vietnam War and Korean DMZ veterans are eligible for this benefit, but children of veterans exposed to Agent Orange in Thailand are not provided the same support. This bill would make equal the level of benefits that other children receive due to their parents' exposure to Agent Orange.

The 115th Congress failed to restore care and benefits for Blue Water Navy veterans because one senator did not believe Agent Orange made Blue Water Navy veterans sick and another senator was concerned about the cost. Congress cannot fail these veterans again.

**H.R. 1126, the Honoring Veterans' Families Act**

The VFW supports this legislation, which would authorize VA to properly recognize the surviving spouse and dependents of our nation's veterans.

Current law does not permit VA to replace a veteran's government-furnished headstone to inscribe the deceased veteran's surviving spouse or dependent who is interred with the veteran. This bill would authorize VA to replace a veteran's headstone to ensure it rightfully honors the spouse or dependent that is laid to rest with the veteran.

It would also authorize VA to replace a headstone that has been used to mark the grave of a spouse or dependent that precedes the veteran. Currently, VA lacks the authority to furnish a headstone for an eligible spouse or dependent who precedes an eligible veteran in death and is interred in a private or tribal cemetery.

The VFW is also glad this bill would establish a retroactive effective date to authorize VA to properly recognize a spouse or dependent who is already interred with an eligible veteran, but lacks the proper recognition on the veteran's headstone. The VFW would, however, recommend that this Subcommittee amend this bill to align the effective date with Public Law 115-136, which corrected the disparity of eligibility for headstones between spouses and dependents. It authorized VA to provide headstones for certain spouses and dependents who die on or after November 11, 1998. The VFW urges this Subcommittee to establish the same effective date for this authority.

**H.R., 1199, the VA Website Accessibility Act of 2019**

The VFW supports this legislation which would require VA to ensure its websites and kiosks meet accessibility requirements. With VA's increased reliance on websites, such as eBenefits and My HealtheVet, to communicate with veterans and kiosks at VA medical centers to check in for appointments, VA must ensure all veterans have the ability to utilize such modalities.

**H.R. 1200, the Veterans' Compensation Cost-of-Living Adjustment Act of 2019**

The VFW supports this legislation which would increase VA compensation for veterans and survivors, and adjust other benefits by providing a cost-of-living adjustment (COLA). The VFW is pleased to support any bill increasing COLA for our veterans, however, we would prefer to make COLA increases permanent and automatic.

Disabled veterans, along with their surviving spouses and children, depend on their disability compensation or dependency and indemnity compensation to bridge the gap of lost earnings caused by the veteran's disability or death. Each year veterans wait anxiously to find out if they will receive a COLA. There is no automatic trigger that increases these forms of compensation for veterans and their dependents. Annually, veterans wait for a separate act of Congress to provide the same adjustment that is automatically granted to Social Security beneficiaries. While the VFW thanks this Subcommittee for consistently passing COLA legislation, we urge Congress to make this authority permanent.

**H.R. 1628, the Enewetak Atoll Cleanup Radiation Study Act**

When service members answer the call of duty without hesitation, it is our duty to take care of the repercussions of their military service. The VFW supports this legislation, which would commission a study to determine if veterans who participated in the atomic cleanup of Enewetak Atoll from 1977 to 1980 were exposed to high levels of radiation.

This is one more example of military toxic exposure causing adverse health conditions which have been ignored for far too long. The VFW thanks the Committee for its attention to this important issue and for its efforts to ensure Enewetak Atoll Cleanup veterans are provided the care and benefits they deserve.

**H.R. 1826, the Veterans Valuing Our Widows and Widowers Act**

The VFW supports this legislation, which would transfer the Medal of Honor pension to surviving spouses.

Veterans who have been awarded the Medal of Honor have made extraordinary sacrifices for our country and are rightfully awarded a special pension for those heroic acts. The loved ones of our most honored heroes often forgo careers to become

full time caregivers. This means they become dependent on the Medal of Honor pension to make ends meet. However, the Medal of Honor pension ends with the death of the recipient and their spouses often do not qualify for VA benefits upon that death.

Our nation has continued pensions for surviving spouses in the past, such as pensions for members of the Grand Army of the Republic. It is fitting that our Medal of Honor veterans' spouses should continue to receive Medal of Honor pensions until remarriage of the spouse or their death. This legislation would continue the pension until the surviving spouses' death, but it does not include a remarriage clause. The VFW recommends this Subcommittee discontinue pensions for surviving spouses who remarry before age 55, to make this new benefit equitable with other survivor benefits.

**Draft Legislation to Establish a Grant Program to Conduct Cemetery Research and Produce Educational Materials for the Veterans Legacy Program**

The VFW supports this bill, which would support and enhance the VA Veterans Legacy Program.

Perpetuating the memory and history of our dead is one of the VFW's founding principles. That is why the VFW has collaborated with Ace Hardware to honor veterans by giving out 1 million American-made flags nationwide. This past Memorial Day, 2,300 VFW posts throughout the country used the donated flags to mark and honor veterans' graves.

The Veterans Legacy Program ensures the memories and stories of the brave men and women who have worn our nation's uniform are preserved in perpetuity. While it is still being fully developed, the program provides an avenue for students, descendants, friends, and fellow veterans to learn about the contributions veterans who are interred at VA national cemeteries made to their communities and the country. The VFW is a strong supporter of this program and has worked with the National Cemetery Administration to improve and expand it.

This bill would establish a grant to help VA conduct research and produce educational materials for the program, which are the most labor-intensive and often difficult parts of the program. The VFW believes that such a grant would expedite the research process and ensure this important program is expanded to all VA national cemeteries as soon as possible.

Madam Chairwoman, this concludes my testimony. I am prepared to take any questions you or the Subcommittee members may have.

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**Prepared Statement of Rick Weidman**

Chairwoman Luria, Ranking Member Bost, and other distinguished members of this Subcommittee, Vietnam Veterans of America (VVA) thanks you for the opportunity to present our views on the seven pieces of legislation you are considering this afternoon. First, though, we want to thank you for your efforts on behalf of veterans, members of our families, and survivors.

We would like to begin with our position on the "Amendment in the Nature of a Substitute to H.R. 299." We commend Chairman Takano and his staff for the thoroughness of their research in crafting this amendment, and for including "certain veterans who served in Korea." However, we must take issue with the strictures this amendment would put on the enactment and implementation of H.R. 299, which VVA and the vast majority of VSOs and MSOs supported, and which passed, 482-0, in the last Congress.

As you are aware, VVA has long advocated for justice for those sailors and Marines. They never had "boots on the ground" in the former South Vietnam nor did their vessels ever ply the inland waterways of that former nation, for which more than 58,000 of their countrymen gave their life.

However, we believe that there is enough peer reviewed, replicable science to support our position. Although we acknowledge that it is difficult to argue that seawater contaminated by herbicides could impact personnel aboard ships one hundred nautical miles or so "offshore," we do not believe it is fair or just to limit eligibility for disability compensation and other earned benefits to only those who served on vessels positioned within the "territorial waters" of Vietnam. We do not accept the theory that seawater contaminated with dioxin would not have drifted beyond the parameters defining what is "offshore."

It is important to remember that VA summarily removed all "Blue Water Navy" from the group eligible for benefits if they had a malady or condition that had been



declared “presumptive” or if the veteran could document direct evidence that a condition they suffered was “as likely as not” was caused by exposure to Agent Orange while stationed in Vietnam.

The VA never even tried to establish scientific proof that these veterans were not exposed to toxins. Nor did the VA try to discover any direct evidence from the ships used. Nor did the VA ever even try to see if there was epidemiological evidence one way or the other that the crews on the vessels stationed in the South China Sea had a higher incidence of the presumptive conditions. This was true of each of the more than 11 individuals who served as confirmed or Acting Secretary of Veterans Affairs in the time since enactment of the Agent Orange Act of 1991, which presumed exposure for all land, sea, and air forces assigned to the Vietnam military theater of operations during the war. In other words, the VA had no real or rational justification for excluding any of the Navy veterans at the time they did so. They wanted to do so to avoid paying for just compensation, and for justly earned medical care, so they just did it.

Hence, our position is simple: If a sailor or Marine is the recipient of the Vietnam Service Medal, so should he, or she, be considered a Vietnam veteran who has earned the benefits accorded those who served in the Southeast Asia theatre of operations. This also embraces airmen and women who served in bases in Thailand; and any of their offspring born with spina bifida. We would hope that Mr. Takano will see fit to add children of Thailand-based women veterans born with any of the afflictions embraced for those women who served boots-on-the-ground in Vietnam.

We believe also that those veterans whose claims the VA has previously rejected and whose claims will be validated with the enactment of H.R. 299, should be addressed as expeditiously as possible, as were veterans whose claims went to the top of the pile as per the Nehmer decision.

While VVA’s position (based on the language in the “Agent Orange Act 1991”) may be possibly broader than the bill under consideration, VVA fully and enthusiastically endorses the bill under consideration as H.R. 299, and Mr. Takano’s amendment under consideration as the best possible course of action at this time.

**H.R. 1126, the Honoring Veterans’ Families Act**, which would authorize the VA “to provide inscriptions for spouses and [eligible dependent] children on certain headstones and markers” furnished by the VA for a veteran laid to rest in a non-VA cemetery.

This seems eminently reasonable, and VVA, therefore, supports its enactment.

**H.R. 1199, the VA Website Accessibility Act of 2019**. This bill would direct the VA “to conduct a study regarding the accessibility of VA websites to individuals with disabilities.” Frankly, VA should be doing these reviews regularly, without Congress having to direct them to do so.

This bill is entirely reasonable, and VVA endorses its passage. We would suggest that such a study must assemble focus groups of veterans with various disabilities to view and discuss relevant VA websites.

**H.R. 1628, the Eniwetok Atoll Clean-up Radiation Study Act**. This bill would direct the VA to “seek to enter into an agreement” with NASEM, the reputable National Academies of Sciences, Engineering, and Medicine, to “conduct a study on radiation exposure of the up to 557,000 military personnel relating to the clean-up of Eniwetok Atoll.”

Such a study would seek to determine the feasibility of “a revised or alternative radiation dose assessment” that “would likely yield substantively improved estimates of the radiation dose received by members of the Armed Forces who participated in the cleanup of Eniwetok Atoll” between January 1, 1977 and December 31, 1980.

If such an assessment is proved to be feasible, and if it will provide evidence that the fears of affected military veterans are in fact well-founded, VVA endorses this bill.

**H.R. 1826, the Veterans Valuing Our Widows or Widowers Act**, would “provide payment of Medal of Honor special pension to the surviving spouse of a deceased Medal of Honor recipient.”

The “WOW Act” would provide monthly pensions of \$1,329.58 to a surviving spouse. Although we would like to see a less complicated amount, perhaps \$1,500, we otherwise support enactment of the WOW Act.

**H.R. 1200, the Veterans’ Compensation Cost-of-Living Adjustment Act of 2019**. This legislation, like its annual predecessors, would, as its title states, increase the rates of dependence and indemnity compensation for veterans with service-connected disabilities, and for their survivors.

VVA of course supports this bill. We understand the politics behind enacting such a bill every year. We view it as an unnecessary waste of time. Instead of repeating this exercise every year, we would hope that legislative leadership might see the

wisdom of enacting a bill that would provide veterans with the assurance that, come every December 1, they would receive the same COLA as recipients of Social Security receive.

**Draft Bill.** This would have the VA establish a grant program to conduct cemetery research and produce educational materials for the Veterans Legacy Program. Pending further details, VVA endorses the intent of this legislation.

We appreciate the opportunity of expressing our views of these bills, and we would be pleased to respond to any questions any Subcommittee member might care to pose. Thank you.

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### Prepared Statement of Chanin Nuntavong

Chairwoman Luria, Ranking Member Bost and distinguished members of the Subcommittee on Disability Assistance and Memorial Affairs (DAMA); on behalf of National Commander Brett P. Reistad and The American Legion, the country's largest patriotic wartime service organization for veterans, comprising nearly 2 million members and serving every man and woman who has worn the uniform for this country, we thank you for the opportunity to testify on behalf of The American Legions positions on the following pending and draft legislation.

#### H.R. 1126 - Honoring Veterans' Families Act

*To amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide inscriptions for spouses and children on certain headstones and markers furnished by the Secretary.*

Under current law, veterans honorably discharged from military service are authorized a government-issued headstone or marker in a National Cemetery Administration (NCA) cemetery or a privately-owned cemetery. Further, veterans' spouses and eligible children buried in an NCA cemetery can receive a headstone or marker. However, current law does not allow the Department of Veterans' Affairs (VA) to add information about spouses and/or children to the gravestone or marker of a veteran buried with a government-furnished headstone or marker in a non-VA cemetery.

The American Legion strives to ensure veterans and their family members receive the support and recognition they deserve. Including family information on a headstone or marker is a standard custom in society, and the families of veterans should not be any different. H.R. 1126, The Honoring Veteran Families Act, alters current law by allowing, if feasible and upon request, VA to make inscriptions on a veteran's headstone or marker regarding their spouse and/or children. It would also allow VA to replace a veteran's headstone or marker to add such an inscription if the veteran predeceased their spouse and/or dependent child and already has a government-issued headstone or marker.

Through American Legion Resolution No. 377: Support for Veterans Quality of Life<sup>1</sup>, we support authorizing the Secretary of VA to add an inscription to a government-issued headstone or marker for a veteran's eligible spouse and/or children buried in all cemeteries with the veteran. This common-sense legislation would allow the VA Secretary to provide, if feasible and upon request, these inscriptions for individuals who died on or after October 1, 2018.

**The American Legion supports H.R. 1126.**

**Draft Legislation - To permit the Secretary of Veterans Affairs to establish a grant program to conduct cemetery research and produce educational materials for the Veterans Legacy Program.**

**To permit the Secretary of Veterans Affairs to establish a grant program to conduct cemetery research and produce educational materials for the Veterans Legacy Program.**

In 2017, the National Cemetery Administration (NCA) established the Veteran Legacy Program (VLP), a grant-based partnership between NCA and academic institutions to conduct research on the lives of veterans interred in NCA cemeteries. The research illuminates how those buried in NCA cemeteries contributed to their country as servicemembers and to their community as veterans. VLP makes information

<sup>1</sup>The American Legion Resolution No. 377 (2016): Support for Veteran Quality of Life

available to the public through informative materials such as interactive maps to educate visitors.<sup>2</sup>

There is currently no law that authorizes a grant program to conduct cemetery research. This draft legislation permits cemetery research and educational material production, as well as identification of eligible recipients including institutions of higher learning, local agencies, non-profit organizations, and other eligible recipients as determined by the Department of Veteran Affairs (VA) secretary. The legislation also permits the establishment of appropriate utilization of funds for research and educational material to promote community engagement for Fiscal Year 2020 under grant authority. The American Legion supports memorializing those who served our great nation.

Through American Legion Resolution No. 377: Support for Veterans Quality of Life<sup>3</sup>, we support the Secretary of the Department of Veterans Affairs in establishing a grant program to conduct cemetery research and produce educational materials for the Veteran Legacy Program. The American Legion urges Congress to enact legislation and programs within VA that will enhance, promote, restore or preserve benefits for veterans and their dependents, including final resting places in national shrines and with lasting tributes that commemorates their service.

**The American Legion supports this draft legislation as currently written.**

#### **H.R. 1200: Veterans' Compensation Cost-of-Living Adjustment Act of 2019**

*To increase, effective as of December 1, 2019, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans, and for other purposes.*

This bill will provide a Cost of Living Allowance (COLA) effective December 1, 2019. Disability compensation and pension benefits awarded by the Department of Veteran Affairs (VA) are designed to compensate veterans for medical conditions due to service or those who earn below a designated income threshold. H.R. 1200 appropriately recognizes annual increases to costs of living and increases benefits commensurate with those cost increases.

For 100 years, The American Legion has advocated on behalf of our nation's veterans, to include the awarding of disability benefits associated with chronic medical conditions manifest related to selfless service to this nation. Annually, veterans and their family members are subjects in the debate regarding the annual cost of living adjustment for these disability benefits. For these veterans and their family members, COLA is not simply an acronym or a minor adjustment in benefits; instead, it is a tangible benefit that meets the needs of the increasing costs of living in a nation they defended.

The American Legion is pleased to support this bill, in part because it does not include two mechanisms we are resolved to oppose, Consumer Price Indexing and "round down" provisions. The American Legion opposes using any Consumer Price Index that would reduce the annual cost-of-living adjustment for military retirees, veterans receiving Social Security benefits, or VA beneficiaries.<sup>4</sup> Similarly, The American Legion also appreciates this bill does not include "round-down" provisions, where veterans' benefits would be rounded-down to the next whole dollar to save money. Rounding down is a slippery slope that dilutes the value of future benefits. Veterans should never have their benefits "round down" to provide legislative fiscal ease to help offset the cost of creating or expanding additional benefits elsewhere under Title 38.

The American Legion supports legislation to provide a periodic cost-of-living adjustment increase and to increase the monthly rates of disability compensation.<sup>5</sup>

**The American Legion supports H.R. 1200.**

<sup>2</sup>Veteran Legacy Program

<sup>3</sup>The American Legion Resolution No. 377 (2016): Support for Veteran Quality of Life

<sup>4</sup>American Legion Resolution No. 164: Oppose Lowering of Cost-of-Living Adjustments

<sup>5</sup>American Legion Resolution No. 187: Department of Veterans Affairs Disability Compensation

**H.R. 1199: VA Website Accessibility Act of 2019**

*To direct the Secretary of Veterans Affairs to conduct a study regarding the accessibility of websites of the Department of Veterans Affairs to individuals with disabilities.*

20 USC 794d § 508 (Section 508), of the Rehabilitation Act, establishes requirements for electronic and information technology developed, maintained, procured, or used by the Federal government. Section 508 requires federal electronic and information technology to be accessible to people with disabilities, including employees, and members of the public. An accessible information technology system is one that operates in a variety of ways and does not rely on a single sense or ability of the user.

The VA Website Accessibility Act of 2019, is not proposing any changes to Section 508. H.R. 1199 requires Department of Veterans Affairs (VA) to examine all websites (including attached files and web-based applications) of VA to determine whether such websites are accessible to individuals with disabilities in accordance with section 508. Further, H.R. 1199 requires VA to compile a complete list of non-compliant websites and submit a plan to Congress to make these websites compliant with the requirements of Section 508.

The provisions of this bill fall outside the scope of established resolutions of The American Legion. As a large, grassroots organization, The American Legion takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. However, The American Legion believes access to accurate and relevant information is essential to making informed decisions. This is especially true for disabled veterans who must make critical daily decisions about their health and the health and welfare of their dependents. We support efforts to identify the challenges. The American Legion believes that all veterans should have access to VA and VA's resources.

With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action, which best serves veterans.

**The American Legion has no current position on H.R. 1199.**

**H.R. 1628: Enewetak Atoll Clean-Up Radiation Study Act**

*To direct the Secretary of Veterans Affairs to seek to enter into an agreement with the National Academies of Sciences, Engineering, and Medicine to conduct a study on radiation exposure relating to the cleanup of Enewetak Atoll, and for other purposes.*

Servicemembers cleaning various nuclear testing sites, including the Marshall Islands, during the 1970s and 1980s were exposed to significant radiation because of their duties. Servicemembers who participated in cleaning up these nuclear testing sites suffer from high rates of cancers due to their exposure to radiation and nuclear waste. These servicemembers are currently unable to receive the same treatments and service-related disability presumptions that other "radiation-exposed veterans" receive from the Department of Veterans Affairs. The American Legion believes these veterans deserve the same benefits that U.S. law guarantees to other servicemembers exposed to dangerous radiation and nuclear waste. The American Legion believes VA should be responsible for the care of these atomic cleanup veterans.

The American Legion would like to see servicemembers impacted by toxic exposures receive the same treatments and service-related disability presumptions, this legislation would help establish further evidence to support these veterans' claims.

**The American Legion supports H.R. 1628.**

**H.R. 1826: Veterans VOW Act**

*To amend title 38, United States Code, to provide payment of Medal of Honor special pension under such title to the surviving spouse of a deceased Medal of Honor recipient, and for other purposes.*

The provisions of this bill fall outside the scope of established resolutions of The American Legion. The American is a resolution based, grassroots organization that takes positions on legislation based on resolutions passed by the membership or in meetings of the National Executive Committee. The American Legion has no current

position on H.R. 1826. With no resolutions addressing the provisions of the legislation, The American Legion is researching the material and working with our membership to determine the course of action which best serves veterans.

**The American Legion has no current position on H.R. 1826.**

**H.R. 299: Blue Water Navy Vietnam Veterans Act of 2019**

*To amend title 38, United States Code, to clarify presumptions relating to the exposure of certain veterans who served in the vicinity of the Republic of Vietnam, and for other purposes.*

Veterans who served on open sea ships off the shore of Vietnam during the Vietnam War are called “Blue Water Veterans.” Currently, Blue Water Veterans must have physically set foot on the land of Vietnam or served on its inland waterways between January 9, 1962 and May 7, 1975 to be presumed to have been exposed to herbicides when claiming service-connection for diseases related to Agent Orange exposure.

Blue Water Veterans who did not set foot in Vietnam or serve aboard ships that operated on the inland waterways of Vietnam must show, on a factual basis, that they were exposed to herbicides during military service in order to receive disability compensation for diseases related to Agent Orange exposure. These claims are decided on a case-by-case basis.

We are aware the Department of Veteran Affairs (VA) previously asked the National Academy of Sciences’ Institute of Medicine (IOM) to review the medical and scientific evidence regarding Blue Water Veterans’ possible exposure to Agent Orange and other herbicides. IOM’s report, “Blue Water Navy Vietnam Veterans and Agent Orange Exposure” was released in May 2011. The report concluded that “there was not enough information for the IOM to determine whether Blue Water Navy personnel were or were not exposed to Agent Orange.”

However, Vietnam veterans who served on the open sea now have health problems commonly associated with herbicide exposure. Just as those who served on land were afforded the presumption because it would have placed an impossible burden on them to prove exposure, Congress should understand the injustice of placing the same burden on those who served offshore. Clearly, all the toxic wind-blown, waterborne, and contamination transfer stemming from aircraft, vehicle, and troop transfer makes it impossible to conclude that Agent Orange-dioxin stopped at the coastline.

On February 27, 2019, our National Commander testified before a joint hearing of the Senate and House Veterans’ Affairs Committee urging VA to provide care and benefits to our Veterans exposed to herbicides such as agent orange during the Vietnam War. He called upon Congress to pass H.R. 299, the Blue Water Navy Veterans Act, and thereby amend Title 38, U.S. Code, to presume exposure to agent orange for military personnel who served during the Vietnam War on any vessel that came within 12 nautical miles of the Vietnam coastline.

In this year’s landmark Procopio decision, the U.S. Court of Appeals for the Federal Circuit determined service in the Vietnam War includes anyone within the 12 nautical mile territorial waters of the Republic of Vietnam.<sup>6</sup> The science is also settled, as a 2002 Australian study concluded that “personnel on board ships were exposed to biologically significant quantities of dioxins,” and Australia began granting disability benefits to its former sailors in 13 years ago.<sup>7</sup>

With the expansion of care available resulting from Procopio and potential changes from this pending legislation, The American Legion supports this proposed legislation with amendments. The American Legion will support this legislation contingent upon the inclusion of additional language requiring VA to engage in a robust and comprehensive educational campaign. This education campaign must work in concert with DoD to make all Guard, Reserve members, and Purple Heart recipients aware of increased benefits as a result of this statute and interpretation. Additionally, all active duty and reserve members must be made aware of the removal of the cap on Jumbo Loans.

Through Resolution No. 246: Blue Water Navy Vietnam Veterans, The American Legion supports legislation to expand the presumption of Agent Orange exposure to

<sup>6</sup>Procopio v. Wilkie, 913 F.3d 1371

<sup>7</sup>Report to the Department of Veteran Affairs, Australia titled “Examination of the potential exposure of Royal Australian Navy (RAN) personnel to polychlorinated dibenzodioxins and polychlorinated dibenzofurans via drinking water”

any military personnel who served on any vessel during the Vietnam War that came within 12 nautical miles of the coastlines of Vietnam.<sup>8</sup>

**The American Legion supports H.R. 299 with Amendments.**

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**Prepared Statement of Shane L. Liermann**

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a non-profit veterans service organization comprised of over one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. DAV is pleased to offer our views on the bills under consideration by the Subcommittee.

**Amendment in the Nature of a Substitute to H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019**

DAV strongly supports the Amendment in the Nature of a Substitute to H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019, which will correct the injustice done to Blue Water Navy Vietnam veterans. As you know, during the 115th Congress, H.R. 299, similar Blue Water Navy legislation, passed the House of Representatives with a vote of 382 to 0; however, the bill was not successful in the Senate.

We are pleased that Chairman Takano and Ranking Member Roe have collaborated to bring H.R. 299 back before the Committee. While the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) in *Procopio v. Wilkie*, overruled VA's previous misinterpretations and determined that service in the Republic of Vietnam includes the territorial waters within 12 nautical miles of the baseline, H.R. 299 will codify and protect that decision to ensure those men and women exposed to the toxic herbicides will be eligible for the benefits earned by their service.

**Section 2. Clarification of Presumptions of Exposure for Veterans Who served in Vicinity of Republic of Vietnam.**

Congress passed the Agent Orange Act of 1991 to provide benefits and establish presumptive diseases for veterans exposed to Agent Orange. When VA implemented the Agent Orange Act, it determined that veterans who received the Vietnam Service Medal, to include those who served in the waters offshore, were exposed to Agent Orange. In 1993, a VA General Counsel opinion held that veterans with service in the waters offshore were exposed to Agent Orange.

The Veterans Benefits Improvements Act of 1996 extended the official wartime period for service in Vietnam. Subsequently, a VA General Counsel opinion in 1997 misinterpreted that statute and determined only veterans who physically served in Vietnam would be granted a concession of exposure to Agent Orange. In 2002, the VA updated its manual reiterating that exposure to Agent Orange was conceded only to those physically in Vietnam. The decision to exclude Blue Water Navy veterans from the concession of exposure to Agent Orange was not based on medical or scientific evidence, law, or actual Congressional intent; it was based on a misinterpretation.

In 2006, the Court of Appeals for Veterans Claims held that VA's interpretation was incorrect; however, VA subsequently appealed that decision to the Federal Circuit. In 2008 the Federal Circuit upheld VA's decision to exclude Blue Water Navy Vietnam Veterans.

As noted previously, during the 115th Congress, H.R. 299, Blue Water Navy legislation, passed the House of Representatives with a vote of 382 to 0 in June 2018. Senate leadership tried to pass the bill by unanimous consent, but due to the objections of two Senators, the bill failed as the 115th Congress closed in December 2018.

On January 29, 2019, in *Procopio v. Wilkie*, the Federal Circuit overruled VA's previous misinterpretations and held that it was Congress' intent to include the territorial seas as serving in Vietnam. The Court defined the territorial seas as 12 nautical miles from the baseline (the mean low-water mark).

The VA had until April 29, 2019, to appeal the decision to the U.S. Supreme Court. Although Secretary Wilkie, at the Senate hearing on March 26, 2019, indicated that the VA would not recommend appealing the *Procopio* decision, recently

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<sup>8</sup>American Legion Resolution No. 246 (Sept. 2016): Blue Water Navy Vietnam Veterans

the Supreme Court granted the Department of Justice a 30-day extension to potentially file an appeal of the Procopio decision.

H.R. 299 and its proposed amendment would codify Procopio's holdings that service in the Republic of Vietnam includes the territorial waters within 12 nautical miles from the baseline. The legislation would use the same grid coordinates in the legislation approved by the House last year which would extend beyond 12 nautical miles in some locations, particularly the southern portion of Vietnam. We strongly support Section 2, in alignment with DAV Resolution No. 033, which advocates that service in the Republic of Vietnam includes service in the territorial waters offshore.

VA will need to issue guidance to process and interpret Procopio v Wilkie either via regulation or by their manual. Since that guidance could be contrary to the intent of the Federal Circuit decision, we believe it necessary to pass H.R. 299 to protect and codify the decision and to ensure its correct interpretation and application for all affected veterans.

### **Section 3. Presumption of Herbicide Exposure for Certain Veterans Who Served in Korea.**

In accordance with DAV Resolution No. 090, we also support Section 3 that will recognize September 1, 1967 as the earliest date for exposure to herbicides on the Korean DMZ. This change will provide veterans greater equity with respect to the dates of herbicide exposure and the presumptive diseases associated therein.

In 2003, P.L. 108-183 established statute, title 38, United States Code, §1821, that provides spina bifida as a presumptive disease for children of veterans exposed to Agent Orange in or near the DMZ. It defines those veterans as those who served in the active military, on or near the DMZ, as determined by the Secretary in consultation with the Secretary of Defense, during the period beginning on September 1, 1967, and ending on August 31, 1971.

Currently, there are no statutes to concede Agent Orange exposure for veterans who served on or near the Korean DMZ. However, there are regulations as published in 38 C.F.R. § 3.307(a)(6)(iv), which note, if a veteran served on or near the Korean DMZ between April 1, 1968 and August 31, 1971, exposure is conceded and thus the veteran can establish service connection for the established presumptive diseases.

The U.S. Military Advisory Group's Vegetation Control Plan (CY-68) reveals that Agent Orange was used in 1967 and 1968 in trial application in U.S. Army 2nd Infantry Division and Republic of Korea Army 21st Infantry Division regions. Based on the U.S. Military Advisory Group's Vegetation Control Plan, the Republic of Korea recognizes 1967 as the earliest date of exposure to Agent Orange on the DMZ for their veterans.

In July 2016, the South Korean Daejeon District Court determined that this includes the 3rd Infantry Division GOP region in 1967 with evidence in the form of a Class 3 confidential military document reporting "suspected application" of Agent Orange.

As noted, children of veterans with spina bifida are eligible for benefits based on the veteran's exposure as early as September 1, 1967, however, the VA only recognizes April 1, 1968, for a veteran's exposure to establish their own presumptive service connection. Section 3 will align these two issues with respect to herbicide exposure and the presumptive diseases associated therein.

### **Section 4. Benefits for Children of Certain Thailand Service Veterans Born with Spina Bifida.**

DAV supports Section 4 as it will provide benefits for those children of veterans exposed to herbicides while serving in Thailand during the Vietnam Era, which is in agreement with DAV Resolution No. 090.

It is proper to note that current statutes do not recognize veterans who served in Thailand during the Vietnam Era as exposed to herbicides. VA's manual (M21-1) does recognize herbicide exposure for specific military occupational specialties on the perimeter of eight Thai Royal Air Force Bases. VA's manual requires Air Force veterans to have service on the perimeters of the air bases; Army veterans to have provided perimeter security on air bases and to have been a member of the military police who served on the perimeter of small Army bases. However this creates additional burden of proof and development upon the VA and veterans.

There is currently legislation pending in the Committee, H.R. 2201, which would automatically concede Agent Orange exposure for all veterans who served at military installations in Thailand during the Vietnam Era, regardless of the base, duty on the perimeter or military occupational specialty. We ask the Subcommittee to consider addressing H.R. 2201 in the near future and eliminate any inequity created.

**Section 5. Updated Report on Certain Gulf War Illness Study.**

DAV supports Section 5 as it agrees with DAV Resolution No. 069, which urges continued collaboration on research and studies on the health outcomes of the men and women exposed to toxins in the course of their active military service.

**Section 6. Loans Guaranteed under Home Loan Programs of Department of Veterans affairs.**

DAV does not have a resolution specific to Section 6 to provide home loan guaranties for jumbo loans and takes no position on this section of the proposed amendment. However, we would note that this section includes the continuation of VA's policy of waiving home loan guaranty fees on service-connected veterans, which DAV adamantly supports.

**H.R. 1126, the Honoring Veterans' Families Act**

H.R. 1126, the Honoring Veterans Families Act, would allow the Department of Veterans Affairs to make an inscription on a veteran's grave regarding their spouse or dependent child if that veteran is buried in a non-VA cemetery. It would also allow the VA to replace a veteran's grave marker to add such an inscription if the veteran predeceased their spouse or dependent child and already has a marker. Current law does not provide for any inscription honoring spouses or dependents.

DAV does not have a resolution that pertains to this issue but we would not oppose its passage.

**H.R. 1199**

This bill would require the Secretary of Veterans Affairs to examine and report on all websites (including attached files and web-based applications) of VA to determine whether such websites are accessible to individuals with disabilities in accordance with section 508 of the Rehabilitation Act of 1973.

H.R. 1199 would help to ensure that all VA websites and associated files are accessible by all veterans, especially those with disabilities and impairments as noted in section 508. DAV does not have a resolution on this issue; however, we would not oppose the enactment of this bill.

**H.R. 1200**

This bill, if enacted, would authorize a cost-of-living adjustment (COLA) for veterans in receipt of compensation and pension, and for survivors of veterans who died from service-incurred disabilities and are in receipt of Dependency and Indemnity Compensation (DIC). It would provide a COLA increase by the same percentage as Social Security and would effective December 1, 2019.

Receipt of annual COLA increments aids injured and ill veterans, their families, and their survivors to help maintain the value of their VA benefits against inflation. Without COLAs, these individuals, who sacrificed their own health and their family life for the good of our nation, may not be able to maintain a quality of life in their elder years. DAV strongly supports H.R. 1200 as it is in alignment with DAV Resolution No. 031.

We further note that the Administration's proposed budget for FY 2020 is seeking to round-down COLA computations, for five years from 2020 to 2024. The cumulative effect of this proposal levies a tax on disabled veterans and their survivors, costing them money each year.

DAV is pleased to note that H.R. 1200 does not include any language about rounding-down the proposed COLA increase. Millions of veterans and their survivors rely on their compensation for essential purchases such as food, transportation, rent, and utilities. Any COLA round-down will negatively impact the quality of life for our nation's disabled veterans and their families.

**H.R. 1628**

H.R. 1628 will require the Secretary to enter into an agreement with the National Academy of Sciences, Engineering, and Medicine to conduct a study on the level of radiation experienced by those members of the DOD who participated in the Enewetak Atoll Cleanup in contrast to the report from the National Defense Threat Reduction Agency.

The United States conducted 43 nuclear tests on Enewetak Atoll from 1948 to 1958. The tests ranged in yield from a few kilotons to megatons. Prior to the start of testing, the Enewetak people were relocated to Ujelang Atoll, about 124 miles southwest of Enewetak. The tests were conducted primarily on the northern islands



to minimize contamination of the base camp islands located in the atoll's southeast. The tests resulted in small, but observable, residual radiation environments, primarily on the northern islands of the atoll.

Radioactive contamination from nuclear detonations remained after testing ended. During the early 1970s, residents of the atoll, who had been relocated prior to the start of testing, expressed interest in returning to their homeland as they were promised. During the 1971 review required by the agreement between the United States and the Trust Territory of the Pacific Islands, it was determined that Enewetak Atoll was no longer needed for nuclear testing.

In March 1977, the United States began decontamination of Enewetak and built a concrete dome to deposit radioactive soil and debris. Approximately 6,000 military service members of the United States Department of Defense (DOD) participated in the cleanup project. The DOD established a Joint Task Group within the Defense Nuclear Agency to conduct the cleanup, as authorized by Congress in Public Law 95-134, in an operation named the Enewetak Atoll Cleanup Project (ECUP). The decontamination efforts concluded in May 1980.

In April 2018, the Defense Threat Reduction Agency released its report "Radiation Dose Assessment for Military Personnel of the Enewetak Atoll Cleanup Project." The report concluded that the highest of the estimated upper-bound total effective radiation doses for any of the included sample assessments is 0.21 rem. This dose is similar to the average effective dose of 0.31 rem to the U.S. population from ubiquitous background radiation.

We have concerns over the accuracy of the report. For example, the report acknowledges that high heat and humidity conditions at Enewetak damaged 90 to 100 percent of the film badges during the initial months of the clean-up. Typically, this damage was such that, if the wearers had received low doses, they would have been obscured by damage, which compromised the film badge image used to quantify exposure.

There is also evidence of two technicians who were given permission to bivouac on a controlled island overnight. Their film badges recorded doses of 0.400 rem and 0.430 rem. These doses were about two orders of magnitude greater than expected based on average exposure rates on that island. An investigation was conducted to assess the validity of the film badge doses based on worker activities and known radiation exposure rates on the island. Although there appeared to be no known circumstances that could account for the recorded doses, it was possible to inadvertently expose the film badges if they were not stored in a low background area when not in use.

In addition, film badge and dosimeters were placed on a pile of steel debris. The film badges and dosimeters exposed for 14 hours placed on the debris pile known to contain the activation product Co-60 reported 0.413 and 0.466 rem and 0.519 and 0.465 rem, respectively. Reasonable agreement was observed between the technicians' film badge readings and those that resulted from the placement of the film badges and TLDs on the debris pile. The investigation concluded that it was likely that the technicians were not exposed to the radiation doses measured by their film badges.

In accord with DAV Resolution No. 090, we fully support this bill. In reference to the noted discrepancies, we agree that it is necessary to reconcile the Defense Threat Reduction Agency's report.

#### **H.R. 1826**

This bill would amend 38 U.S.C. § 1562 by increasing the Medal of Honor Special Pension from \$1000.00 a month to \$1,329.58 a month. It would further amend the statute to direct the Secretary to pay the monthly special pension to the surviving spouse of a person who was awarded a Medal of Honor.

At this time, DAV does not have a resolution on this issue; however, we would not oppose the enactment of H.R. 1826.

#### **Draft Bill to permit the Secretary of Veterans Affairs to establish a grant program to conduct cemetery research and produce educational materials for the Veterans Legacy Program.**

This legislation would permit the Secretary to establish a grant program with institutions of higher learning to conduct cemetery research and produce educational materials for the Veterans Legacy Program (VLP). The VLP is NCA's educational outreach initiative whose mission is to memorialize our nation's veterans through sharing their stories. The NCA partners with universities, schools, teachers, professors, and students of all levels to research veterans interred in NCA cemeteries and how they contributed to their country and their communities.

Currently, the NCA sponsors research for the VLP through federal contract, which is slightly different than a grant. The government uses grants and cooperative agreements as a means of assisting researchers in developing research for the public good, whereas it uses contracts as a means of procuring a service for the benefit of the government. Grants are much more flexible than contracts. Typically in federal contracts, changes cannot be made to the scope of work or budget, whereas in grants these changes can usually be made with the university's approval. Failure to deliver under a federal contract can have potential legal or financial consequences to all parties at the University, whereas in the case of a grant typically a final report explaining the outcome is sufficient.

While DAV does not have a resolution specific to this program, we support the intent of the program to remember those who have served and sacrificed and are laid to rest in our National Cemeteries.

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**Prepared Statement of David A. Butler, Ph.D.**

COMMENTS CONCERNING H.R. 1628

THE ENEWETAK ATOLL CLEANUP RADIATION STUDY ACT

Chairwoman Luria, Ranking Member Bost and members of the Subcommittee, thank you for the opportunity to testify today. My name is Dr. David Butler and I serve as a Scholar in the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine and as Director of its Office of Military and Veterans Health. Accompanying me is Dr. Ourania Kosti, Senior Program Officer in the National Academies' Nuclear and Radiation Studies Board and Principal Investigator for the Radiation Effects Research Foundation Program, which provides support to a cooperative Japan-US research organization that studies radiation effects in the survivors of the atomic bombings of Hiroshima and Nagasaki.

The National Academy of Sciences was created more than 150 years ago through a congressional charter signed by Abraham Lincoln in order to serve as an independent, authoritative body outside the government that could advise the nation on matters pertaining to science and technology. Every year, approximately 6,000 Academies members and volunteers serve pro bono on our consensus study Committees or convening activities. We do not advocate for specific policy positions. Rather, we enlist the best available expertise across disciplines to examine the evidence, reach consensus, and identify a path forward. Our reports, proceedings and other publications are available via the web in PDF form without charge.

The National Academies has a long history of advising the federal government on the health effects of radiation exposures in general and radiation exposures resulting from military activities in particular. This work originated with a November 1946 directive from President Truman asking our organization to undertake a program to study the long-range biological and medical effects of the atomic bomb on man. Since then, we have among other efforts conducted reviews of the methods used to assign radiation doses to service personnel at nuclear weapons tests, an examination of the use of film badge dosimetry in atmospheric nuclear tests, studies of the mortality of military participants in U.S. nuclear weapons tests, and in 2003, a comprehensive review of the dose reconstruction program of the Defense Threat Reduction Agency. The National Academies has also previously reviewed dose assessments generated by the federal government for personnel exposed to radioactive materials as a result of their work at the Department of Energy's Hanford, Fernald, and Savannah River nuclear weapons production facilities.

The Office of Military and Veterans Health that I direct includes the Medical Follow-up Agency, which was established after World War II and which maintains a collection of epidemiologic data on over 100 study populations of former military personnel. These data include information on the causes of death of participants in the Operation CROSSROADS atmospheric nuclear test series that took place in the Bikini Atoll in the Marshall Islands.

I have included a list of National Academies of Sciences, Engineering, and Medicine reports related to ionizing radiation exposure due to military service and clean-up operations and radiation dose reconstruction in the materials submitted for the Subcommittee's attention.

Turning to the legislation under consideration in this hearing, H.R. 1628 outlines the parameters of a study that would allow for a more complete understanding of the radiation doses received by those involved in the clean-up operations undertaken at Enewetak Atoll from 1977 to 1980 in response to nuclear testing in the area in the 1940s and 50s. It takes as its starting point a 2018 Defense Threat Reduction

Agency report that presented the results of a radiation dose assessment for military personnel involved in the clean-up operations.

A radiation dose assessment—which is also called a dose reconstruction—is, in brief, a means of characterizing a person’s received ionizing radiation dose through an accounting of the radiation sources, their source strengths and the routes and duration of exposure. The 2003 National Academies review of the DTRA dose reconstruction program I mentioned identified six basic elements of any radiation dose assessment:

1. Definition of exposure scenarios: the location and activities of individuals in areas where radiation exposure could occur, the time spent in those locations, and the characteristics of the radiation environment in those areas.

2. Identification of exposure pathways: the relevant pathways of external (proximity to sources) and internal (through ingestion or inhalation of, or skin contact with sources) exposure to radioactive substances.

3. Development and implementation of methods of estimating dose: the data, assumptions, and methods of calculation used to estimate dose from the relevant exposure pathways in the assumed scenarios.

4. Evaluation of uncertainties in the estimates of dose: assessment of the effects on estimated dose of uncertainties in assumed exposure scenarios and uncertainties in models and data used to estimate dose in assumed scenarios, to obtain an expression of confidence in the estimated dose.

5. Presentation and interpretation of results: documentation of the assumptions and methods of estimating dose and discussion of the results in context of purpose of the dose reconstruction.

6. Quality assurance and quality control: the systematic and auditable documentation of the dose reconstruction process and results. [p. 30–38]

Depending on the available information, a dose assessment will include some combination of direct or indirect measurements obtained, for example, by film badges and field survey instruments; and estimates of unmeasured parameters that are based on historical data, proxies for exposure such as the subject’s job, the physics of the radioactive materials, and human biology and physiology. A radiation dose assessment often entails the calculation of the estimated upper-bound dose—that is, the dose that would occur if all of the uncertain components of the analysis were set to the plausible value that would in combination yield the highest estimate.

The proposed study would address two primary questions related to the Enewetak veterans:

- whether information exists to conduct a revised or alternative radiation dose assessment that would consider exposures and exposure pathways that were not part of the 2018 radiation dose assessment; and
- whether conducting such a revised or alternative radiation dose assessment is feasible and would likely yield substantively improved estimates of the radiation dose received by members of the Armed Forces who participated in the cleanup of Enewetak Atoll.

If the answers to those questions were “yes”, the study would go on to

- identify the sources of the data for the new assessment, including a delineation of the protocol to be used in conducting such an assessment;
- estimate the time and funding needed to conduct the assessment;
- identify the major sources of uncertainty in the assessment and how such sources may affect the estimates generated by it; and
- identify the best means to carry out the new assessment.

The National Academies believes that this is a scientifically-sound approach to addressing lingering questions regarding the exposures of the Enewetak veterans and that the results would allow these veterans, their loved ones, and the Federal Government to make more fully informed decisions.

Thank you for your attention. Dr. Kosti and I would be happy to answer your questions.

**National Academies of Sciences, Engineering, and Medicine reports related to ionizing radiation exposure due to military service and clean-up operations and radiation dose reconstruction**

Health Risks from Exposure to Low Levels of Ionizing Radiation (1956; 1972; 1977; 1980; 1990; 1999; 2006)

Federal Research on the Biological and Health Effects of Ionizing Radiation (1981)  
 Review of the Methods Used to Assign Radiation Doses to Service Personnel at Nuclear Weapons Tests. (1985)  
 Mortality of Nuclear Weapons Test Participants. (1985)  
 Review of the U.S. Army Ionizing Radiation Dosimetry System (1986)  
 Film Badge Dosimetry in Atmospheric Nuclear Tests (1989)  
 The Hanford Environmental Dose Reconstruction Project: A Review of Four Documents (1994)  
 A Review of Two Hanford Environmental Dose Reconstruction Project (HEDR) Dosimetry Reports Columbia River Pathway and Atmospheric Pathway (1995)  
 Radiation Dose Reconstruction for Epidemiologic Uses (1995)  
 Adverse Reproductive Outcomes in Families of Atomic Veterans: The Feasibility of Epidemiologic Studies (1995)  
 Mortality of Veteran Participants in the CROSSROADS Nuclear Test (1996)  
 An Evaluation of Radiation Exposure Guidance for Military Operations: Interim Report (1997)  
 A Review of the Radiological Assessments Corporation's Fernald Dose Reconstruction Report (1997)  
 Exposure of the American People to Iodine-131 from Nevada Nuclear-Bomb Tests: Review of the National Cancer Institute Report and Public Health Implications (1999)  
 Potential Radiation Exposure in Military Operations: Protecting the Soldier Before, During, and After (1999)  
 The Five Series Study: Mortality of Military Participants in U.S. Nuclear Weapons Tests (2000)  
 Letter Report to Review and Comment on the Phase II Draft Report Prepared for the CDC by the Risk Assessment Corporation (RAC) Titled "Savannah River Site Environmental Dose Reconstruction Project Phase II" (2000)  
 A Review of the Dose Reconstruction Program of the Defense Threat Reduction Agency (2003)  
 Gulf War and Health: Updated Literature Review of Depleted Uranium (2008)  
 Review of the Toxicologic and Radiologic Risks to Military Personnel from Exposures to Depleted Uranium During and After Combat (2008)  
 (Underlined titles are available in PDF form via embedded links in the digital copy of this document.)

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## QUESTIONS FOR THE RECORD

**From: Principal Deputy General Counsel (02)**

**subj: Issues Relating to Implementation of Procopio v. Wilkie**

**To: Under Secretary for Benefits (20)**

**Chairman, Board of Veterans' Appeals (01)**

**QUESTIONS PRESENTED:**

1. Does the Department of Veterans Affairs (VA) have the authority to promulgate regulations and implement policies regarding the evidence necessary to prove service within the 12 nautical mile territorial sea of Vietnam?

2. Is the Board of Veterans' Appeals (Board) permitted or required to remand cases where the evidence of record is insufficient to determine whether the veteran served within the 12 nautical mile territorial sea of Vietnam?

**HELD:**

1. VA has the authority to promulgate regulations and implement policies regarding the evidence necessary to establish service within the territorial sea of Vietnam, so long as the regulations and policies are consistent with the existing laws governing the consideration of evidence in VA benefits cases.

2. When the evidence of record is insufficient to determine whether the veteran served within the 12 nautical mile territorial sea of Vietnam, the Board should generally remand the case for further factual development. However, if the file contains sufficient evidence for such a determination, the Board should decide the case.

**DISCUSSION:**

1. Section 1116 of title 38, United States Code, provides that a veteran who "served in the Republic of Vietnam" during the period beginning on January 9,

19621 and ending on May 7, 1975, shall be considered exposed to an herbicide agent, and that exposure in turn will be presumed to be the cause of certain enumerated diseases. VA had historically interpreted the statutory phrase “served in the Republic of Vietnam” as incorporating a requirement that the Veteran served on land or inland waterways. See *Haas v. Peake*, 525 F.3d 1168, 1180–83 (Fed. Cir. 2008). In *Procopio v. Wilkie*, 913 F.3d 1371, 1380–81 (Fed. Cir. 2019) (en banc), the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that veterans who “served in the 12 nautical mile territorial sea of the ‘Republic of Vietnam’” are entitled to presumptive service connection under 38 U.S.C. § 1116, so long as they meet the section’s other requirements.

The court did not address the evidence necessary to support a finding that a particular veteran served within the territorial sea of Vietnam. The Veterans Benefits Administration (VBA) and the Board have asked the Office of General Counsel to address VA’s authority to promulgate regulations and implement policies regarding that issue and the necessity or appropriateness of remanding appealed cases affected by the *Procopio* decision.

2.VA is authorized to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by VA and are consistent with those laws. 38 U.S.C. § 501(a). This includes rules regarding “the nature and extent of proof and evidence” required “to establish the right to benefits,” id. § 501(a)(1), as well as “the methods of making investigations,” id. § 501(a)(3). VA may also implement policies that convey guidance to VBA adjudicators, though they are not binding on the Board and do not have the force of law. See *Gray v. Sec’y of Veterans Affairs*, 875 F.3d 1102, 1108–09 (Fed. Cir. 2017), cert. granted, 139 S. Ct. 451 (2018); *Disabled Am. Veterans v. Sec’y of Veterans Affairs*, 859 F.3d 1072, 1077–78 (Fed. Cir. 2017). Accordingly, VA may establish rules and policies regarding the evidence necessary to prove a veteran’s service within the territorial sea of Vietnam, but any such rule or policy must be consistent with the existing laws governing the consideration of evidence in VA benefits cases.

3.For example, VA could promulgate a regulation requiring specific types of evidence supporting a veteran’s bare assertion that his or her ship entered the territorial sea of Vietnam. See *Arzio v. Shinseki*, 602 F.3d 1343, 1347 (Fed. Cir. 2010) (noting that a regulation may provide “additional prerequisites for establishing service connection for particular circumstances”); *Nat’l Org. of Veterans’ Advocates v. Sec’y of Veterans Affairs*, 330 F.3d 1345, 1352 (Fed. Cir. 2003) (NOVA) (upholding 38 C.F.R. § 3.304(f)’s requirement that “credible supporting evidence” confirm a veteran’s assertion of an in-service stressor for post-traumatic stress disorder claims). To be clear, VA is required to consider “all information and lay and medical evidence of record in a case,” so VA can never limit its inquiry to the point of precluding the full and fair consideration of lay evidence on all matters that lay evidence is capable of establishing. 38 U.S.C. § 5107(b); see *Jandreau v. Nicholson*, 492 F.3d 1372, 1377 (Fed. Cir. 2007) (noting that laypersons are competent to provide some kinds of evidence and may not be competent to provide others). However, VA could certainly make a regulation delineating scenarios in which lay evidence is sufficient to establish presence within the territorial sea of Vietnam and scenarios when it may be inherently unreliable. Alternatively, VA could review all procurable information and compile a confirmed list of the Naval ships that entered the territorial sea of Vietnam.

4.As noted above, any such rule or policy could not preempt existing laws governing the consideration of evidence in VA benefits cases. This means that, even if VA were to compile a ship list or promulgate a corroboration requirement, “all information and lay and medical evidence of record” in a case must be considered. 38 U.S.C. § 5107(b); see *NOVA*, 330 F.3d at 1352 (noting that the “credible supporting evidence” requirement of § 3.304(f) “is consistent with § 5107(b) by not precluding the consideration of lay evidence”); 38 C.F.R. § 3.303(a). And in a given case, if there is an “approximate balance of positive and negative evidence” on the question of a veteran’s service within the territorial sea of Vietnam after “careful consideration of all procurable and assembled data,” that issue must be “resolved in favor of the claimant.” 38 C.F.R. § 3.102; see 38 U.S.C. § 5107(b).<sup>1</sup>

5.However, if the record before the decisionmaker does not supply a basis for resolving factual questions, that does not mean the evidence is in “equipoise”; rather, it means that additional development is needed. See *Chotta v. Peake*, 22 Vet. App. 80, 86 (2008) (issue that requires speculation “has not been proven to the level of equipoise”); see also *Fagan v. Shinseki*, 573 F.3d 1282, 1287 (Fed. Cir. 2009) (“benefit of the doubt” rule is “not a means of reconciling actual conflict or a contradiction

<sup>1</sup>This provision is commonly referred to as the “benefit of the doubt” rule or the “equipoise” standard. See *Mariano v. Principi*, 17 Vet. App. 305, 313 (2003).

in the evidence” (citing 38 C.F.R. § 3.102)); 38 U.S.C. § 5103A(a) (requiring “reasonable efforts” in obtaining relevant records), (c) (requiring efforts to obtain Federal records to “continue until the records are obtained unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile”); *Shoffner v. Principi*, 16 Vet. App. 208, 213 (2002) (VA has “discretion to determine how much development is necessary for a determination of service connection to be made” (citing 38 C.F.R. § 3.304(c))). Where all procurable data has not been assembled in a case before the Board, remand will be warranted. See *Jones v. Shinseki*, 23 Vet. App. 382, 390 (2010) (“it is the Board’s duty to remand for further development” if it is not clear that “all procurable and assembled data” has been obtained); *Tucker v. West*, 11 Vet. App. 369, 374 (1998) (“[W]here the record is otherwise inadequate, a remand is the appropriate remedy.”).

6. Given that *Procopio* announced a rule of law conferring new significance to the 12 nautical mile demarcation, it is to be expected that many appellate records will not contain information necessary to determine whether the veteran ever crossed the 12 nautical mile threshold. In such cases, a Board remand for additional factual development is both permissible and necessary. Nevertheless, some cases may be capable of immediate decision. For example, if the record contains persuasive evidence that a given veteran entered a bay or harbor recognized as within Vietnam’s territorial sea, or if the record contains a deck log establishing that the ship went within 12 miles of the mainland while the veteran was serving on board, this evidence would support the conclusion that the veteran entered the territorial sea of Vietnam. Similarly, the Board may determine that all procurable data related to the factual questions at issue, including whether the veteran “served in the Republic of Vietnam” as defined in *Procopio*, has been assembled. In such a scenario, the Board may deny application of the presumption, although the circumstances under which the record can be deemed complete with respect to the newly significant question of whether the veteran crossed the 12 nautical mile threshold will likely be limited. In both of those scenarios, however, there would be no reason to remand for further development on the question of whether the veteran “served in the Republic of Vietnam”, and the Board would be obligated to decide the case, absent other issues warranting remand.

Richard J. Hipolit

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## Materials Submitted For The Record

### LETTER FROM PAUL R. LAWRENCE, Ph.D

SUBJ: *Procopio v. Wilkie*

This letter provides interim procedures for controlling claims affected by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) decision in *Procopio v. Wilkie*.

#### **Background**

On January 29, 2019, the Federal Circuit held that the clear intent of 38 U.S.C. § 1116 is that a Veteran who served in the territorial sea of the “Republic of Vietnam” is entitled to the presumption of exposure to Agent Orange. This class of Veterans is generally known as “blue water” Navy Veterans; but any claim based on the court’s expanded definition of exposure, regardless of branch of service, might be included.

Claims that might be affected by the *Procopio* ruling include those based on herbicide exposure for which the only evidence of exposure is service on a vessel within the 12- nautical mile territorial sea of the Republic of Vietnam or other service offshore, depending upon VA’s evaluation of the court’s decision.

The decision will require VBA to extend the presumption of service connection where the claimant can establish (1) service in the territorial seas of Vietnam in the time period specified in 38 USC 1116(a) and (2) that he or she suffers (or suffered, in the case of death claims) from one of the diseases listed in 38 C.F.R. § 3.309(e).

#### **Current Status**

VA filed a motion to stay implementation, which suspends final action on claims potentially affected by the *Procopio* decision, while VA continues to evaluate the court’s decision.

### **Controlling claims potentially affected by Procopio**

Until Procopio litigation and subsequent determinations have been resolved, rating decisions in these claims cannot take place. Pending further guidance, regional offices must control claims from “blue water,” Vietnam Veterans seeking presumptive service connection with end product (EP) 335 as explained below.

#### **New claims (Veteran or survivor) for service connection for a disease associated with herbicide exposure**

- Establish the appropriate EP (110, 010, 020, 140 etc.) for all claimed condition(s)
- Apply the Agent Orange flash
- If the claimed condition is not shown under 38 CFR 3.309, decide the issue following normal processing rules
- Proceed with development and rating for all claimed issues, in the normal manner, based on existing regulations, manual provisions, and other guidance to include consideration of service connection for any claimed condition on a direct, indirect, or presumptive basis
- **Grant claimed contentions under existing exposure rules**
- Rate and promulgate under pending EP, clearing the EP
- Do not put at issue or defer any issues where Procopio is the only basis for conceding herbicide exposure
- If no issues can be granted without consideration of Procopio, change (PCHG) to BP 335
- Send normal notification regarding issues addressed in the rating
- **Establish new EP for contentions potentially eligible under Procopio**
- Establish separate EP 335- Review or EP335- PMC Review
- Apply the “Blue Water Navy” Flash (regardless of branch of service)
- Add contentions still requiring adjudication based on Procopio exposure
- Send notification to the claimant containing the approved paragraph below
- Add an AO - Blue Water Notice tracked item with 30-day suspense date
- Claim status: Open
- The claim will recall during the next production run and be held in 499 until further action can be taken

#### **Reopened claims previously denied for Agent Orange exposure**

If a Veteran’s or survivor’s claim for service connection for a disease associated with herbicide exposure has previously been denied (both on a direct and presumptive basis) and there is no basis to establish entitlement except under Procopio:

- Establish the claim using EP 335 REVIEW - Review, or EP335- PMC Review claim labels
- Send notification to the claimant containing the approved paragraph
- Add an AO - Blue Water Notice tracked item with 30-day suspense date
- Claim status: Open
- The claim will recall during the next production run and be held in 499 until further action can be taken.

#### **Approved paragraph:**

The following language will be used to acknowledge receipt of a claim [or appeal] for service connection that includes Procopio exposure:

- “We have received your claim [or appeal] for (insert the disability(ies), or death, accrued or burial claim) based upon claimed herbicide exposure. Your claim [or appeal] may be affected by a recent decision by the U.S. Court of Appeals for the Federal Circuit, *Procopio v. Wilkie*. VA is evaluating the court’s decision for further action. Currently, VA has temporarily suspended deciding these claims and appeals until further guidance is received from the Department of Veterans Affairs General Counsel. Once we have that guidance, we will resume processing your claim [or appeal].”

#### **Controlling appeals affected by P1-ocopio**

Until VA resolves issues related to Procopio litigation, appeals teams must establish separate VACOLS records with the appropriate VACOLS diary code. In addition, the RO must control appeals from “blue water” Vietnam Veterans seeking presumptive service connection with end product (BP) 335 as explained below.

#### **New Appeals involving only Procopio issues**

- Establish a VACOLS record for only Procopio issue(s). In addition, add a VACOLS diary using diary code VBA046 Blue Water Stay with a suspense of 30 days (default).
- If a Veteran files an appeal on a Procopio issue together with an appeal of non-Procopio issue(s), control only the Procopio issue as explained above. Establish a separate VACOLS record for the non-Procopio issue(s) and process those issue(s) in the standard manner.
- Establish the claim using EP 335 - Review, or EP335- PMC Review claim labels as appropriate for the Procopio issue.
- Enter custom tracked item on the EP 335, "Appeal pending Procopio decision" with 30-day suspense date.
- Send a notification letter to the claimant containing the approved paragraph.

#### **Existing appeals involving Procopio issues**

- Continue to process the appeal for all non-Procopio issues. Process those issues in the standard manner (which could include issuing a SOC/SSOC or other actions).
- Establish a new VACOLS record for any Procopio issues. In addition, add a VACOLS diary using diary code VBA046 Blue Water Stay with a suspense of 30 days (default).
- Establish the claim using EP 335 -Review, 01 EP335 PMC Review claim labels as appropriate for the Procopio issue.
- Enter custom tracked item on the EP 335, "Appeal pending Procopio decision" with 30-day suspense date.
- Send a notification letter to the claimant containing the approved paragraph.

#### **Further guidance**

This guidance provides the basic procedures for handling claims and appeals based on Procopio exposure that cannot be adjudicated under current Agent Orange exposure procedures. VBA will develop additional procedures and will provide further guidance to regional office personnel as necessary.

#### **Questions**

Questions concerning this letter and other issues related to Procopio should be submitted to the VA VBA WAS/ C0 /21 1 Policy mailbox. For ease of communication and consistency, Compensation Service will coordinate appropriate responses with the Office of Field Operations, Appeals Management Office, and Pension and Fiduciary Service.

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### **MEMORANDUM FROM CHERYL L. MASON**

SUBJ: STAY LIFTED ON ADJUDICATION OF APPEALS FOR COMPENSATION BASED ON ALLEGED EXPOSURE TO HERBICIDE AGENTS IN THE OFFSHORE WATERWAYS OF THE REPUBLIC OF VIETNAM.

#### **1. REFERENCES**

- a. 38 U.S.C. § 1116;
- b. 38 C.F.R. § 3.307(a)(6);
- c. Haas v. Peake, 525 F.3d 1168 (Fed. Cir. 2008)
- d. Procopio v. Wilkie, No. 17-1821 (U.S. Fed. Cir. Jan. 29, 2019);
- e. Chairman's Memorandum O1-18-15, "Stay of Adjudication of Appeals for Compensation Based on Alleged Exposure to Herbicide Agents in the Offshore Waterways of the Republic of Vietnam" (Oct. 22, 2018).

#### **2. PURPOSE OF THIS MEMORANDUM**

The purpose of this memorandum is to rescind a stay on the adjudication of appeals which may be affected by the ruling of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in Procopio v. Wilkie, No. 17-1821 (U.S. Fed. Cir.) imposed by Chairman's Memorandum O1-18-15, as well as to set forth procedures for the resumption of processing of cases affected by the stay.

#### **3. BACKGROUND**

a. Congress has established a presumption of exposure to herbicide agents for those veterans who, during active military, naval, or air service, "served in the Re-



public of Vietnam” during a period beginning on January 9 1962, and ending on May 7, 1975. 38 U.S.C. § 1116 (a)(1)(A). The Secretary of Veterans Affairs issued a regulation defining “service in the Republic of Vietnam” to include the “waters off-shore” if the conditions of service involved duty or visitation in the Republic of Vietnam. 38 C.F.R. § 3.307 (a)(6)(iii). Both the statutory phrase “served in the Republic of Vietnam” and the implementing regulation were found ambiguous as applied to service in the waters adjoining the landmass of Vietnam. *Haas v. Peake*, 525 F.3d

#### **MEMORANDUM NO. 01-19-02**

1168, 1184-85 (Fed. Cir. 2008). VA interpreted both the statute and regulation to require service on the actual landmass or on the inland waterways of the Republic of Vietnam, which the Federal Circuit found reasonable. *Id.* at 1189-93.

b. On January 29, 2019, the Federal Circuit issued an en banc decision in *Procopio v. Wilkie*, reversing its prior determination that VA’s interpretation of the statute and regulation was reasonable. Instead, the Court held that the statutory phrase “the Republic of Vietnam” included the 12 nautical mile territorial sea of that nation. *Procopio*, slip op. at 10. By extension, the presumption of herbicide agent exposure extends to those veteran with service in the territorial seas of the Republic of Vietnam. On March 21, 2019, the Federal Circuit denied the Secretary’s motion to stay the entry of mandate. Mandate was issued on March 22, 2019.

#### **4. LIFTING OF STAY PROCEDURES**

a. All cases with appeals pending before the Board that involve issues that were previously stayed by the Board pursuant to Chairman’s Memorandum No. 01-18-15 will be distributed in a manner prescribed by the Chairman or her designee. Case distribution will be consistent with the Board’s statutory requirements under 38 U.S.C. §§ 7107 and 7112 regarding consideration of appeals in docket order, with certain exceptions. To the extent possible, cases will be redistributed to the Veterans Law Judge to whom they were previously assigned.

#### **5. RESCISSIONS**

a. Chairman’s Memorandum No. 01-18-15 (Oct. 22, 2018) entitled “Stay of Adjudication of Appeals for Compensation Based on Alleged Exposure to Herbicide Agents in the Offshore Waterways of the Republic of Vietnam,” is hereby rescinded in its entirety.

b. This memorandum is effective until expressly rescinded, modified, or superseded.

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### **STATEMENTS FOR THE RECORD**

#### **AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO (AFGE)**

Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee:

The American Federation of Government Employees, AFL-CIO (AFGE) and its National Veterans Affairs Council (NVAC) appreciate the opportunity to submit a statement for the record for the May 1, 2019, House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs (DAMA) hearing on pending legislation. AFGE represents more than 700,000 employees in the federal and D.C. governments, including over 250,000 front line employees at the Department of Veterans Affairs (VA) who provide vital care and services to veterans. This includes the employees who work throughout the Veterans Benefits Administration (VBA) and the Board of Veterans Appeals’ serving veterans every day.

AFGE wants to take this opportunity to comment on the draft update of H.R. 299, the “Blue Water Navy Vietnam Veterans Act of 2019,” and the ancillary effects its implementation could have on the claims process. Like all VA compensation claims, “Blue Water Navy” claims go through a process where they are evaluated by both Veteran Service Representatives (VSRs) and Rating Veteran Service Representatives (RVSRs) to ensure that veterans get the benefits they have earned. While all claims go through a similar process, different types of claims require different amounts of attention and time based on their complexity. Relative to other claims, “Blue Water Navy” claims are highly labor intensive and require specialized attention.

“Blue Water Navy” claims take significantly more time to process than most claims. In particular, it takes more time to gather evidence for these claims both

because of the significant amount of time that has elapsed since the Vietnam and Korean Wars and the specificity of evidence required to corroborate an entitlement to benefits, including the exact time and geographic coordinates of when and where a particular service member was serving. However, as a result of existing VBA performance standards, VBA does not consider the complexity and meticulous nature of claims handled by VSRs and RVSRs. As a result, VSRs and RVSRs have been unfairly penalized for handling complex claims. While VSRs and RVSRs are qualified and capable of processing these claims, the system of evaluating these employees should take into account the complexity of “Blue Water Navy” claims and the time and attention needed to accurately process and evaluate them for the benefit of both employees and the veterans they serve.

In turn, as the Subcommittee considers H.R. 299, and its eventual implementation, AFGE urges the Subcommittee and VBA to consider steps to rectify the system of evaluating VSR and RVSR performance, particularly for labor intensive and complex claims. The DAMA Subcommittee has considered similar issues as recently as November 2018 when the Subcommittee examined the Office of the Inspector General (OIG) report released last year titled “Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma.”<sup>1</sup> This report examined the National Work Queue (NWQ) and its effect on Military Sexual Trauma (MST) claims, and how the NWQ’s failure to assign MST claims to designated and specialized VSRs and RVSRs, who in turn serve in a specialized “lane,” negatively impacted veterans with MST claims. Prior to the implementation of the NWQ, VSRs and RVSRs worked in designated lanes that handled similar types of cases repeatedly, giving those employees the opportunity to develop an expertise in certain types of claims. This made them more accurate and efficient in their performance, which both benefited them in their own performance evaluations and allowed them to better serve veterans, particularly those with rarer or more complex claims. Presently, VSRs and RVSRs do not work in official lanes, and are expected to process all cases without developing any beneficial specialization. In its report, the OIG concluded that eliminating specialization was detrimental to veterans with MST claims. As the OIG report explains, prior to the implementation of the NWQ:

VA OIG 17-05248-241 / August 21, 2018

The Segmented Lanes model required VSRs and RVSRs on Special Operations teams to process all claims VBA designated as requiring special handling, which included MST-related claims. By implementing the NWQ, VBA no longer required Special Operations teams to review MST-related claims. Under the NWQ, VSRs and RVSRs are responsible for processing a wide variety of claims, including MST-related claims. However, many VSRs and RVSRs do not have the experience or expertise to process MST-related claims.<sup>2</sup>

Using the same rationale that should assign MST cases to a “Special Operations” lane, AFGE recommends that “Blue Water Navy” claims and other highly complex claims should also be assigned to a “Special Operations” lane due to the level of difficulty and expertise needed to process these claims. In turn, under the “Segmented Lanes model,” VSRs and RVSRs processing cases in the “Special Operations lane” should have their workload and performance adjusted to reflect case complexity. Those adjustments should be reestablished for the benefit of both VBA employees and the veterans they serve.

AFGE appreciates the House Committee on Veterans’ Affairs and its Subcommittee on Disability Assistance and Memorial Affairs considering the potential impact of this legislation on VBA employees. We look forward to working with the Committee and Subcommittee to address these problems facing VSRs and RVSRs and ensuring that veterans receive the benefits they have earned in an accurate and efficient manner.

Thank you for the opportunity to provide input on this important issue.

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### ASSOCIATION OF US NAVY

Dear Chairman Takano and Ranking Member Roe,

The Association of the United States Navy is grateful for the strong, bipartisan support in both the House and Senate in favor of providing benefits to our Blue Water Navy Vietnam Veterans, who still today suffer from the devastating effects of being exposed to the herbicide Agent Orange while at sea.

<sup>1</sup>

<sup>2</sup>VA OIG 17-05248-241 / Page iii / August 21, 2018

However, we are concerned that the latest version of HR 299, the Blue Water Navy Vietnam Veterans Act of 2019, includes language that we feel might limit the recent case of *Procopio v. Wilkie*, which found that the original intent of Congress in the Agent Orange Act of 1991 includes veterans who served in the Republic of Vietnam's territorial sea, with the possibility of including veterans who served in "waters offshore" that would extend past the territorial sea.

Because the current language of the bill appears to confine "waters offshore" to the territorial sea, we fear this would prevent potentially thousands of Navy Vietnam veterans from claiming benefits for Agent Orange exposure.

Accordingly, we ask that the House Veterans Affairs Committee insert the words, "including the territorial seas of such Republic pursuant to the maximum extent authorized by international law," after, "served in the Republic of Vietnam."

AUSN continues to support any effort to get our Navy Vietnam veterans the benefits they have earned through the sacrifice they have given this nation. After years of fighting for these benefits and with victory close at hand through the *Procopio* decision, we ask that Congress make these adjustments and put forward the best bill possible for our veterans.

Sincerely,

RADM Christopher W. Cole, USN (Ret.)  
Chief Executive Officer  
Association of the United States Navy

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#### CONGRESSMAN DOUG LAMALFA

Chairwoman Luria, and Ranking Member Bost, thank you for allowing me to present a statement for the Subcommittee on my legislation, H.R. 1126, the Honoring Veterans' Families Act.

This is a simple bill. As you reviewed it, you probably noticed it takes up just one page of substantive legislative text. This issue was originally brought to my office by a constituent who runs a chapel in Chico, California, Clark Masters. My office immediately recognized its importance and elevated it to the Department of Veterans Affairs, who were aware of the issue and assisted us in drafting a legislative fix for the 21 million veterans across the nation.

Despite its simplicity, H.R. 1126 corrects a tremendous error in the gravemarker benefit that our veterans and their families have earned. This error obstructs the recognition our military spouses and their families deserve in enduring the hardships of military life, and supporting our veterans while they protected us.

Today, with the support of the Department of the Veterans Affairs, and your assistance, H.R. 1126 takes its next step towards passage in the House of Representatives. Chairwoman Luria and Ranking Member Bost, thank you again for your support on considering this measure with an amendment in the nature of a substitute, I look forward to working with you both to continue advancing this legislation.

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#### JOHN WELLS (Photos upon request)

##### ABOUT MILITARY-VETERANS ADVOCACY

Military-Veterans Advocacy Inc. (MVA) is a tax-exempt IRC 501(c)(3) organization based in Slidell Louisiana that works for the benefit of the armed forces and military veterans. Through litigation, legislation and education, MVA works to advance benefits for those who are serving or have served in the military. In support of them, MVA provides support for various legislation on the State and Federal levels as well as engaging in targeted litigation to assist those who have served. Our organization consists entirely of volunteers who do not draw a salary from MVA.

Along with the Blue Water Navy Vietnam Veterans Association, Inc (BWNVA) MVA has been the driving force behind the Blue Water Navy Vietnam Veterans Act (HR 299).

Working with Members of Congress and United States Senators from across the political spectrum, MVA and BWNVA provided technical information and support to sponsors who have worked tirelessly to partially restore the benefits stripped from the Blue Water Navy veterans fifteen years ago. Currently HR 299 has 323 co-sponsors. A previous version passed the House unanimously in the 115th Congress but died in the Senate. The offset which still exists in this version of HR 299 was part of the reason it failed in the Senate.

Military-Veterans Advocacy's Executive Director Commander John B. Wells USN (Ret.)

MVA's Executive Director, Commander John B. Wells, USN (Retired) has long been viewed as the technical expert on the Blue Water Navy saga. A 22-year veteran of the Navy, Commander Wells served as a Surface Warfare Officer on six different ships, with over ten years at sea. He possessed a mechanical engineering subspecialty, was qualified as a Navigator and for command at sea and served as the Chief Engineer on several Navy ships. As Chief Engineer, he was directly responsible for the water distillation and distribution system. He is well versed in the science surrounding this bill and is familiar with all aspects of surface ship operations. This includes the hydrological effect of wind, tides and currents.

Since retirement, Commander Wells has become a practicing attorney with an emphasis on military and veterans' law. He is involved on several pending cases concerning the Blue Water Navy and has filed amicus curiae briefs in other cases. He has tried cases in state, federal military and veterans courts as well as other federal administrative tribunals. Since 2010 he has visited virtually every Congressional and Senatorial office to discuss the importance of enacting a bill to partially restore benefits to those veterans who served in the bays, harbors and territorial seas of the Republic of Vietnam. He is also recognized in the veteran's community as the subject matter expert on this matter.

### Historical Background Timeline I-JR 299

In the 1960's and the first part of the 1970's the United States sprayed over These regulations allowed the presumption of exposure throughout the Vietnam Service Medal area, the dark solid line marked on Exhibit 1.

In 1997 the VA General Counsel issued a precedential opinion excluding service members who served offshore but not within the land borders of Vietnam. The opinion construed the phrase "served in the Republic of Vietnam" as defined in 38 U.S.C. § 101(29)(A) not to apply to service members whose service was on ships and who did not serve within the borders of the Republic of Vietnam during a portion of the "Vietnam era." The opinion stated that the definition of the phrase "service in the Republic of Vietnam" in the Agent Orange regulation, 38 C.F.R. § 3.307(a)(6)(f), "requires that an individual actually have been present within the boundaries of the Republic to be considered to have served there," and that for purposes of both the Agent Orange regulation and section 101(29)(A), service "in the Republic of Vietnam" does not include service on ships that traversed the waters offshore of Vietnam absent the service member's presence at some point on the landmass of Vietnam."

After lying dormant for a few years, this General Counsel's opinion was incorporated into a policy change that was published in the Federal Register during the last days of the Clinton Administration. The final rule was adopted in the Federal Register in May of that year.<sup>5</sup> The VA recognized the exposure presumption for the "inland" waterways but not for offshore waters or other locations.

Historically the VA's Adjudication guidance, the M21-1 Manual allowed the exposure presumption to be extended to all veterans who had received the Vietnam service medal in the absence of "contradictory evidence." In a February 2002 revision to the M21-1 Manual the VA incorporated the VA General Counsel Opinion and the May 2001 final rule and required a showing that the veteran has set foot on the land or entered an inland river or stream. This "boots on the ground" requirement was in effect until the Procopio decision.

Since 2008 various versions of the Blue Water Navy bill languished in Congress, often stymied by the Pay as You Go Act. After years of frustration, MVA and the Blue Water Navy Vietnam Veterans Association turned to the courts. Despite many years of discussion, it was the court who achieved these benefits for the Blue Water Navy veterans.

### Law of the Sea

Despite VA protestations to the contrary, the exclusion of the Blue Water Navy veterans from the presumption of exposure was never about science. The decision stems from an irrational arbitrary and capricious finding of an incompetent General Counsel's office. The basis behind this deadly determination was an ill-proper statutory interpretation, made in defiance of accepted principles concerning the law of the sea as well as international treaties signed and ratified by the United States. In defense of the General Counsel's office, Military-Veterans Advocacy believes the initial action was taken because of ignorance rather than maliciousness. Their unconscionable defense of a bad decision, however, was nothing sort of abhorrent. The VA has

accepted the court ruling in Procopio and Secretary Wilkie has repeatedly stated that he does not support or envision a petition for

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

Article 6 of the 1958 Convention goes on to say:

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

The United Nations on the Convention on the Law of the Sea (UNCLOS) takes a similar approach. Article 3 states as follows:

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Article 7 § 1 goes on to say:

1. In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

The geographic points in the current language of HR 299 and the proposed Amendment mirror the territorial sea. For this reason, in light of Procopio, they are unnecessary and should be removed. We have discussed the matter with Secretary Wilkie and provided him copies of the treaty and the analysis. Any attempt to limit the breadth of the territorial sea would be subject to litigation and MVA believes that such limitation would fail. Our co-counsel agrees.

#### **Waters Offshore post Procopio**

In a previous version of HR 299, MVA supplied the HVAC the geographic points found in the legislative Due to State Department concerns about the term "territorial sea" the Committee, in consultation with MVA, decided to use the term "waters offshore." At the time this sense. In the wake of Procopio, however, it no longer does. As for the State Department's long-standing objection to the Vietnamese claim, Procopio has made their protest clear, at least as it applies to veterans' Jaw.

Procopio actually went further than defining the territorial sea. It also addressed the issue of "waters offshore." In doing so, it opened an opportunity to include ships, mostly aircraft carriers, under the presumption umbrella.

38 C.F.R states in pertinent part:

certainly a limitation should be drawn, Congress needs to take care that it does not limit the term to the currently accepted territorial sea. At a minimum we believe that "waters offshore" extends through the contiguous zone. The contiguous zone is a belt of water extending another 12 miles from the territorial sea. It probably extends further. But what it will do is encompass several carriers not included in the territorial sea.

Hydrologists tell us that the discharge prism of the Mekong River extends "several hundred kilometers" into the South China Sea. Assuming "several hundred" means 300+ then the plume would extend at least 161.987 nautical miles from the mainland. We know from a New Jersey environmental study, that dioxin from an Agent Orange spill in the Passaic River was found in seafood 150 nautical miles from shore. At its widest point, the territorial sea was approximately 90 nautical miles from the mainland. Accordingly, it would be fair to assume that the "waters offshore" extends 60 nautical miles from the territorial sea or 72 nautical miles from the baseline.

We currently have a suit pending in the Court of Appeals for Veterans Claims; which addressed this issue. The veteran's ship, an aircraft carrier, appears to be slightly outside the territorial sea, although we are still tracking its various transits. The VA has already conceded, however, that the ship was in "waters offshore." We believe we have a strong argument to cover this carrier as long as the Congress does not define "waters offshore" as in the current version of HR.299.

While no court has yet accepted the theory delineated in the previous paragraph, we do intend to litigate the issue. Based on Procopio, they should, extend the presumption for some distance. But they will accept none of it if Congress passes a bill limiting the term "waters offshore" to the geographic points that make up the territorial sea. That is the current language of HR.299 .

MVA notes that the Takano Amendment does delete the term 'waters' from 'waters offshore.' This appears to have been an inadequate attempt to address our concerns. This merely inserts a third term into the controversy which will open the door to a finding of ambiguity. Should a court find this wording ambiguous, as they must, it will allow them to move to step two in the Chevron analysis, where they are required to give "great deference" to agency interpretation. Our Procopio counsel agrees.

Procopio has given us the opportunity to cover carriers operating outside of the territorial sea that were no doubt exposed to the dioxin; opportunity will be lost forever if Congress defines waters offshore by using the last year's language. The courts will look at the law and proclaim that "Congress has spoken." We cannot afford that. Thousands of sailors will be left behind.

### **Stay of Proceedings**

The Procopio mandate issued on March 22, 2019. Stays of Blue Water cases have been lifted in the Court of Appeals for Veterans Claims and the Board of Veterans Appeals. The VA is moving forward with implementation. There is no need to build a delay mechanism into this bill

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### **KEITH KIEFER (Photos upon request)**

Thank you for the opportunity to represent NAAV, Enewetak Atoll Radiological Cleanup Veterans and myself before this Committee. I would also like to thank you for your interest in the plight of the Enewetak Atoll Radiological Cleanup Veteran.

In the interest of full disclosure, I am an Enewetak Atoll Radiological Cleanup Veteran & based on my present health status, I would not benefit from HR1377 (legislation independent from HR1628) or this legislation (HR1628) unless it was amended to study the health issues of this Special Cohort and make suitable changes to title 38. This is not saying I don't have effects due to Ionization Radiation Exposure, the effects will be discussed later.

The NAAV membership and non members are split on their support on HR1628, however, are unanimous in their appreciation of genuine interest and support. I will not beat around the bush and explain some of the rationale for this divide, as I understand it.

#### 1) Concern of the effects and delay of related pending legislation

First, there is concern that HR1628 will directly or indirectly result in a delay of a hearing on HR1377 and passage.

NAAV membership and non members are in agreement we don't want any delays on the passage of HR1377. Nor can these Veterans afford to have HR1377 delayed.

Many of the Enewetak Atoll Cleanup Veterans have Medical and financial needs not being addressed because they are not recognized as Atomic Veterans. Delay in the passage of HR1377 will reinforce some veterans' belief that the VA (administrative side) mission statement is: "Deny, Delay until they Die".

Both Bills can coexist in Law. However, these veterans can not afford to have HR1377 delayed. They need the Health care now. The best estimate we have is only about ten percent of these Veterans remain alive. Of those alive, most have significant health issues. Under title 38 twenty one (21) diseases have been accepted as being caused by Ionization Radiation exposure and presumed to be service connected, with qualifications. The qualifications in general are; an individual was in a specific identified area with the potential to have been exposed to ionization radiation, contract one or more of the 21 diseases and in some cases meet a window of time in which the disease was contracted. HR1377 simply makes clear the Enewetak Cleanup Veterans are part of the Atomic Veteran special cohort group. See additional background notes.

#### 2) Concern over the process, unfettered access, and integrity of the study/research.

Second, there is concern that HR1628 will only be as good as the data provided for the study and the integrity of the institute conducting the study (some studies are designed to provide the customer (those paying for the study) the documentation to support their assumption.) Past veteran experience is that neither the VA or DTRA have been forthcoming in providing facts that support the Veterans' claims. With the VA contracting for the study, there is at a minimum, the appearance of a conflict of interest.

#### 3) Additional/alternate methods to provide science based data.

Alternate studies that could be completed potentially resulting in supporting veteran data in a shorter time period for less cost would be:

a) Acquiring a list of the service members and their service number (SSN,) access the Social Security (SS) data base and determine the percentage of Cleanup Veterans in their late 50s/ early 60s that have passed on (died) and compare this to the expected mortality rate for this age group. If it is statistically higher one could conclude (since the common denominator is Enewetak Cleanup experience) the cause of the higher death rate is Enewetak service. Expanding this to include those still alive with health issues will only reinforce the cause as the common denominator having been ionization exposure.

b) It is our understanding Susan Thaul, Ph. D from the Congressional Research Employees Association did a study of Nevada Desert Test Veterans concluding the death rate for Prostate Cancer was 20% higher than individuals that were not a test participant. The delta most likely would have been higher if those alive with a cancer (prostate) were also studied. Also, in our understanding this type of study does not require special legislation, the budget is already established, it simply requires a legislator's (Congressmen or Senators) request.

#### 4) Review of the DTRA "FACT SHEET"

We believe there is merit in an independent, non bias, party with unfettered access to data and veterans to review the DTRA "FACT SHEET" making corrections to reflect an accurate account of the activity. There is a trust issue with DTRA and the VA's (administrative side) reliance on faulty data. See attached photos showing the lack of proper PPE.

#### 5) Address the narrow limited presumptive disease list.

We also believe there is merit in an independent, non bias, party with unfettered access to data and veterans to review the presumptive disease list and expand the list if the study supports this.

This as one more example of military toxic exposure causing adverse health conditions which has been ignored for far too long. Because it is very burdensome and costly to show a nexus between their exposure(s) and particular health conditions that erupt years after exposure, HR1377 should be adopted to include the Cleanup Veterans as Atomic Veterans. Denying these men this opportunity simply because DTRA and the Department of Defense would never admit to these activities at atomic sites is morally unjust. The nuclear testing and cleanup performed at Enewetak Atoll should entitle these veterans to the same presumptions for radiation-related illnesses when applying for VA disability compensation as in other incidents of service-related toxic exposure. There is no discernible reason why these veterans should be denied equal treatment under the law.

### BACKUP NOTES

Their shouldn't be any dispute to the following facts: the title of the 1977 to 1980 operation was "Enewetak Atoll Radiological Cleanup Project", it was a Humanitarian project, 43 atomic bombs were detonated at the atoll, soil was scraped up from islands and transported to Ruint island and deposited in Cactus crater and capped with 18 inches of concrete. What is in dispute is the level of radiation and what if any PPE (Personnel Protection Equipment) was available and used. (See attached photos for level of PPE used.) (The level of radiation a veteran was exposed to has been an ongoing issue for decades. This is why the Presumed disease list was developed.)

If the radioactive soil contamination level was below that of a non contaminated site, there would not be a need to scrape and remove the contaminated soil. It was determined the soil was contaminated at a level that was hazardous to the Marshall Islanders' ability to return. In contrast, the Defense Threat Reduction Agency (DTRA) (It should be noted the Atomic Energy Commission (AEC) was a party of the Cleanup project and DTRA is a child of the (AEC).) DTRA claims: "the highest dosimeter record entry was 0.070 rem" ("below the 2006 US population annual dose of 0.620 rem"). What they don't say is over what period (time) the 0.07 rem exposure occurs, nor the inability of a rad badge to record exposure to Alpha, Beta or neutron radiation, additional exposure pathways or failure of these devices in a high heat and humidity environment. Three radioactive elements, predominately present, that Rad badges would not record are the alpha particles emitted by Plutonium or the high energy Beta particles from Cesium 137 or Beta particles from Strontium 90. The DTRA reported 0.620 rem annual background exposure is higher than reported by most sources. These sources state background radiation of 0.300 rem annually for the US and 0.400 rem annually for Denver, Colorado is typical. If the DTRA claim of a dose level was 0.070 rem was accurate, scraping and transporting the soil

to another island would not have occurred. Further, additional remediation of the islands (after 1980) would not have been required (after the failed cleanup mission). Under the 2000 environmental restoration award approximately \$103 million of further decontamination occurred. See Graham, Bill. 11Written Testimony of Bill Graham, Public Advocate (retired), Marshall Islands Nuclear Claims Tribunal." Subcommittee on Asia, the Pacific, and the Global Environment. Committee on Foreign Affairs. United States House of Representatives. May 20, 2010.

When in question, the benefit of doubt is to be in favor of the Veteran. HR1377 does this. If a Veteran has not been exposed to ionization radiation, the Veteran is likely not to contract one of the 21 recognized radiological induced diseases. The VA would not have additional liability or medical cost if they didn't have one of these diseases.

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Enewetak Atoll is a group of Islands, part of the Marshal Islands in the South Pacific which was the site of at least 43 Atomic bomb tests. Between January 1, 1977 to December 31, 1980 approximately 4033 Armed Services Veterans and 4000 government employees and contractors were involved with the Enewetak Atoll Radiological Cleanup Project. The mission was to remove radiological contaminated soil and debris, rehabilitating the islands to a safe radiological level so the native inhabitants could return and live on their native islands. Even after three plus years of effort this mission failed.'

Presently, two programs exist for qualifying individuals exposed to Ionization Radiation and some of its effects (The Cleanup Veterans are not included in either program). One program is administrated out of the Department of Justice (Radiation Exposure Compensation Act, REGA) and the other the Veterans Administration (VA) (Title 38 CFR).It should be noted that Title 38 CFR paragraph 3.715 provides for an offset of REGA compensation preventing double dipping.

The VA has two groups consisting of Veterans exposed to Ionization Radiation. Atomic Veterans (1945 to 1962) and Occupational Exposure Veterans (Veterans exposed to Depleted Uranium (DU) and Veterans in Japan during the Humanitarian efforts surrounding the Fukushima (Operation Tomodachi) March 12 to May 11, 2011). Enewetak Atoll Radiological Cleanup Veterans have been excluded from the Atomic Veteran category, and the Occupational exposure Veterans category. The 1945 to 1962 veterans exposed to Ionization Radiation are classified as both an Atomic Veteran and Occupational Exposure Veteran. Bill(s) introduced in the 116th session, S555/HR1377 Mark Takai Atomic Veterans Healthcare Act, intend to rectify this deficiency.

The Defense Threat Reduction Agency (DTRA) and the VA defy logic, claiming the Enewetak Atoll Cleanup Veterans were not exposed to Ionization Radiation, and rely on misinformation provided during the mission to the US Senate and US Congress. It does not take a rocket scientist to dispel this myth. If dangerous radiation contamination did not exist, why spend three years and \$100 million plus dollars moving 110,000 cubic yards of Gont —a—rnina—td— —Qil ci—[ld material to the island of Ruint?

Then capping the contents with 18 inch thick cement panels made from contaminated soil and portland cement? Why was it determined after 1980 that the islands were not fit for human habitation and another \$103 plus million was spent to remediate the . islands? With some of the radioactive contamination having a half life in excess of 24,000 years and a survey in 1977 showing the levels listed below, how could the veterans and inhabitants not be exposed?

From: NVO-214 ENEWETAK FACT BOOK (A RESUME OF PRE-CLEANUP INFORMATION) COMPILED 1977 PUBLISHED SEPTEMBER 1982

(Note values must be multiplied by 4,320 (180days x 24 hours in a day) to obtain the annual exposure without additional exposures for most veterans present). A non- radiation worker can receive a whole body dose of no more that 0.1 rem/year from industrial ionizing radiation. This exposure would be in addition to the average 0.3 rem/ year from natural background radiation and the 0.05 rem/year from man-made sources such as medical x-rays.)

1 uR/h = 8.766 mR/year = 0.008.766 A/year

1 mR/h = 8.766 A/year

1 R/h = 8766 A/year

Dose - Atoll Island code name/native name 1 uR/h = Alvin/Jinedrol

1 uR/h = Bruce/Ananij

1 uR/h = Clyde/Jimimi 1 uR/h == Glenn/lkuren 1 uR/h = Henry/Mut



1 uR/h = Irwin/Boken 1 uR/h = Rex/Jedrol 1 uR/h = Sam/Boko 1 uR/h = Tom/Munjor  
 1 uR/h = Uriah/Inedral 1 uR/h = Van  
 1 uR/h = Walt/Bokandretok 1 - 2 uR/h = Keith/Kidrenen  
 1 - 5 uR/h = James/Ribewon 5 uR/h = David/Muti/Japtan  
 2.6 R/h = Fred/Eniwetok Enew  
 7 R/h = Elmer/Parry/Madrin or Medren 90 pCi/g Plutonium-239 = Percy/Taiwel  
 235 R/h = Leroy/Rigili/Biken  
 270 R/h = Vera/Arambiru/Alembel 294 R/h = Wilma/Piirai/Billae  
 651 R/h = Ursula/Roja/Lojwa (Lojwa Base Camp location) 774 R/h = Tilda/Bijiri/Bijire  
 1,251 R/h = Nancy/Yieri/Elle 1,252 R/h = Olive/Aitsu/Aej  
 1,753 R/h = Kate/Mujinkarikku/Mijikadrek 1,776 R/h = Lucy/Billee/Kidrinen  
 1,981 R/h = Sally/Aoman/Aomon  
 2,785 R/h = Mary/Bokonarappu/Bokenelab 3,154 R/h = Clara/Eybbiyae  
 3,354 R/h = Daisy/Lidilbut/Louj  
 3,382 R/h = Belle/Bogombogo/Bokombako 3,383 R/h = Alice/Bogallua/Bokoluo  
 3,501 R/h = Janet/Engebi/Enjebi (Aggregate Quarry and Lojwa Base Camp Concrete Slabs)  
 4,329 R/h = Pearl/Rujiyoru/Lujor  
 5,277 R/h = Helen/Bogeirik/Bokaidrik 6,184 R/h = Irene/Bogan/Boken  
 9,533 R/h = Edna/Sanildefonso/Bokinwotme 10,643 R/h = Ruby/Eberiru/Eleleron  
 62,849 R/h = Yvonne/Runit/Runit (Cactus Dome location) 128,729.6 R/h = Enewetak Atoll Atomic Cleanup Mission

The Veterans experience has been RECA has a processing time of less than two years and in general is “just” in its determinations, while the VA in general is over a decade of claim and appeal processes. For an individual(s) coping with the debilitating physical and financial aspects of cancer(s,) RECA has been the difference between financial ruin and hope.

NAAV, AMAC (Association of Mature American Citizens, 1.8 million members and growing), American Legion (2.4 million members), VFW (Veterans of Foreign Wars, 1.4 million members) and other veterans organizations in the past have supported our legislation.

We have had numerous Enewetak Radiological Cleanup Veterans pass away in the recent months. Most of these Veterans range in age from late fifties to early sixties. Presently, the Enewetak Radiological Cleanup Veterans are in a state of limbo.

To those that are predisposed to believe the DTRA “Fact Sheet” documents, I would ask the common sense question: If the level of radiation was safe, why was the name of the project titled “Enewetak Atoll Radiological Cleanup Project”? Why wasn't it titled “Enewetak Atoll Cleanup Project”? Why are the islands still considered unsafe for human habitation? Why is the thyroid incidence at a twenty eight percent rate when the national average is 0.028%, and of that 7 out of 8 are women? Why did approximately 111,000 cubic yards of contaminated soil have to be scraped up and transported to Cactus Crater on Ruint Island, then capped with eighteen inch thick concrete? Why are the Coconuts from the island containing Cesium 137 unsafe for human consumption? How did Plutonium, with a half life of 24,100 years disappear in about 30 years? Why are their numerous documents and evidence disputing these reports? The list goes on.

### **Part of my experience**

As I mentioned earlier, I am an Enewetak Radiological Cleanup Veteran. I would not benefit from the passage of this legislation. That being said I, NAAV and the other Veteran organizations strongly advocate for its passage. Veterans like Paul Edward Laird II that has dealt with Kidney cancer and Renal Cell Carcinoma Bladder cancer at the same time. Each were a different type of cancer. To date he has had seven forms of cancer among a number of other diseases. He passed in March of 2019.

I was stationed at Nellis AFB, Nevada at the time I received TOY (Temporary Duty) orders to go to Enewetak Atoll for 180 days as part of the Enewetak Atoll Radiological Cleanup Project. I was told by those handling the project from Nellis AFB that I would not receive any more radiation than walking the streets of New York City or wearing a watch with a Radium dial. A part of the project I received no baseline Sperm count, Blood analysis or Urine analysis. I was young, naive, a late bloomer (going into the service at 6 ft 1” 160 lbs. and leaving the service at 6 ft 5” 160 lbs.) and believed I would not knowingly be put in harms way. Prior to leaving for Enewetak Atoll, on my own I had a Sperm Count test completed

which came back normal. I arrived at Hickham AFB late on a Saturday. On Monday I was issued several Jungle fatigues, Combat boots and a "Rat Patrol" hat. No orientation or any other instructions. Tuesday morning, I believe, I was on a C130 landing On Wake Island for a several hour layover and refueling. we arrived late evening, possibly Wednesday. I was placed, by myself, in what appeared to be an abandoned building with no sides, a hole ridden corrugated roof, no fan, just my duffle bag, a cot, and a sheet.

The heat and humidity was intense. I awoke the next morning with several Geckos on my stomach. I was amazed at the dilapidated state of everything, lack of vegetation and existence of abandoned damaged WW 11 ships and other military equipment. This was more primitive than any of my duties in remote Alaska —. Again, I received no orientation related to the Radiological Cleanup Project or associated risks.

My AFSC (US Air Force Specialty Code) was 30434 Ground Radio Repair and Maintenance. Like many of my assignments, because of our expertise and versatility we were assigned tasks outside of our normal duty and function . Enewetak was not an exception. I was on just about every island digging up damaged/cut communication lines, repairing and burying the cables. Often new trenches would have to be hand dug to place and bury cables. The soil was contaminated with radioactive material. I was never issued a film badge or dosimeter. I had no respirator or even dust mask. I never saw any of the soil wetted down when being excavated and there always was dust due to winds and other operations. I was involved with the operation, maintenance and repair of the three 10KW HF transmitters, teletype, MARS (Military Amateur Radio Station) and PBX (phone system). We were also responsible for emergency generators.

I was involved with most communications for Medivac operations (communication to aircraft and doctors in Hawaii or Kwajalein during emergency medical situations.) Most of the medical situations were due to shark or eel attacks (they were particularly mean and aggressive at Enewetak Atoll) and heat stroke. The communications equipment was salvaged from a Navy ship. We worked 10 to 12 hour days, six days a week for \$345 a month. We received an air lift of fresh vegetables, fruit, milk, meat and mail once a week. We were allowed one five minute call a week back state side. The toilets and other none potable water was sea water drawn in from the lagoon. Potable water was provided through a desalinization plant. The water again was pulled from the lagoon. The lagoon water which we bathed in, swam, snorkeled, dived and boated in was more than likely contaminated with radioactive material due to the past underwater nuclear tests and pushing contaminated soil into it. The EIS (Environmental Impact Study) and other documents state this was not done, but I saw it in progress. Hind sight, it was not very smart getting water from the lagoon. While on the atoll many of us drank coconut milk and the meat of coconuts grown on the islands as well as some fish caught. I was not told or aware these items were contaminated until years later. The first indication I had that my health was more than likely compromised by my time on the atoll was upon getting out of the service and returning home to my wife. During the entire time we have been married we have never used any birth control methods. My wife was not getting pregnant. After months I was tested and found to be considered sterile. The Gonads and reproquctiye organs are the most sensitive to radiation. Many studies have shown both Military and civilian pilots flying at high altitude have a lower sperm count and more likely to have daughters than sons due to the higher level of cosmic radiation exposure. The order of the body's sensitivity to radiation most sensitive to least is the Gonads, Thyroid, immune system, blood, bones, etc.— Radiation causes premature aging and the younger the person is, the greater the effect. Some are more sensitive to radiation than others. I continued for years having unexplained fevers, muscle and deep bone pain that would come and go without any of the normal causes being present. I went to doctors trying to find answers to the cause of these symptoms. I even had one doctor suggest it was all in my head. I felt the doctors were not competent to solve my problems and I was wasting my time, money, and their time. I stopped going to the doctors for years, still suffering. Through my wife's research, she believed I had an auto immune disorder call Lupus SLE. I didn't test positive for this. I continued to suffer with these symptoms and intermittent diarrhea for years until one day while in bed, my lower back felt like it was on fire. I called my wife over, asking her if it was my imagination or was my back on fire. She said "Yes, your back is burning up" and "Have you been laying on a heating pad?" to which I replied "No." I thought maybe I had a kidney infection; so once again went to the doctor. The first doctor ran a number of tests and exams believing I had Rheumatoid Arthritis. Prior to referring me to a Rheumatologist, she wanted me to have a full physical first. I had a full physical and this doctor found I had a thyroid problem. This was after 1996 and the Atomic

Veteran oath of Secrecy had been lifted. I explained to the doctor about Enewetak and the Radiological Cleanup Project. He told me that it was clear to him that my problems were, more likely than not, due to my radiation exposure, I would have a life time of health problems and Should apply for VA healthcare and a Service Connected Disability. My father had applied for VA Healthcare over a year earlier to the same facility. Within three months I was accepted and in the VA Healthcare. My father waited almost another year before being accepted. My Service Connected Disability claim was for Sperm count (sterile) and the thyroid condition due to Ionization Radiation. Over a year later, without any questions or communications, the claim was denied using the Sperm count which was normal before going over to Enewetak as the basis for denial, the thyroid condition was never addressed. This illustrates the predisposition to denial of a claim. My health continued to deteriorate.

At about age forty, I was told I had the bone structure of a ninety year old and needed to have both hips replaced. I have not been in sports or an occupation that would account for excessive wear and tear. For almost twenty years I was denied hip replacements, claiming I was too —young and would have them worn out prior to dying. I have had three surgeries on my feet due to abnormal bone growth. Strontium 90 found on Enewetak Atoll is known to affect bones. I have abnormal bone growths on my spine, degenerative bone disease, arthritis and ps inial st other issues. I have a number of autoimmune diseases (radiation affe ts the immune system,) and have an abnormal blood disorder which causes blood clots. I have had five Pulmonary Embolisms (PE); on one occurrence a bilateral PE in which I came within seconds of dying. This has been, after much testing, determined to be caused by a disease called Lupus Anticoagulant, an autoimmune disorder. Again, blood and the immune system is affected by radiation. I have non diabetic neuropathy, also know to be caused by radiation. Some of the additional ailments are a duodenal ulcer, an enlarged prostate, pre cancerous pulps in the colon, multiple kidney stones and several teeth that have broken (fallen apart) while eating scrambled eggs. I also have severe sleep apnea. I have no approved Service Connected Disabilities, and no Social Security Disability while the State of Minnesota OMV (Department of Motor Vehicles) and Metro Transit classify me as disabled. I can add additional information as well as back up my statements with factual documentation should this Committee desire it.

Because I have not contracted cancer yet, I will not benefit from HR1377.

Just a few additional notes:

A film badge will not detect radiation from Plutonium. They are also damaged by heat and humidity.

It is difficult to determine the internal radiation dose due to cuts, inhalation or ingestion.

Islands were contaminated with other toxic materials such as Beryllium and Agent Orange.

Documents obtained under FOIA question why certain radioactive elements were not found at Enewetak Atoll during radiological surveys; i.e. uranium, since this is a decayed state of Plutonium.

I did. not see any military personal wearing PPE (Personal Protective Equipment,) only scientists, with the exception of during a photo op.

The veterans involved with this operation are proud to have served their country and, if disappointed, it would be that the operation was not more successful and that the government is not acknowledging the health risks of the operation, nor taking care of those with radiation induced illnesses.

The first I knew the mission was not successful was from a CBS March 1980 60 Minutes report with Morley Schaffer titled Remember Enewetak.

Dupont stated in a memo that, of those using respirators, they were the wrong type and would be ineffective with Radiation.

The Enewetak Atoll Radiological Cleanup Project was either the best planned scenario for plausible deniability or the poorest planned Radiological Cleanup Project.

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### KEN BROWNELL

Greetings,

I was a spec.4 (51810) in the U.S.Army active duty from July 1976 to July of 1980. During my time in the service myself and 30 + men were sent to the Marshall Islands/ Enewetak Atoll ( May 17th to October of 1977) It was our job to begin construction of a 500 man base camp on one of thj;! northern islands, Lojwa. This is-

land is between 2 islands used for atomic testing. Lojwa was contaminated but later was deemed safe. Every day we dealt with heavy dust from the construction equipment and constant heat of the day at times 115+ degrees. We worked an average 12 hour day 6 days a week. When first arriving on the island we slept in tents had our meals from paper bags that had been prepared early in the morning. we had no showers, bath rooms or dining facilities.

Our bill(s) have been in the House now for several sessions. Myself and 3 other Veterans have spoke at the round table meeting this last session. Many Enewetak veterans have visited Washington to speak with representatives. Proof has been provided showing that DOD/DTRA have falsified the documents ( in favor of the Government) that we were never in danger from contamination from radioactive materials! many fellow Veterans have passed away from different forms of Cancer!

I believe this new bill ( HR 1628) is just another attempt to slow down and delay the new bill ( HR 1377) from passing and moving on to the Senate! We do not need another study at this time. the surviving members of the Enewetak cleanup project need help now along with the decedents.

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**ROBERT CELESTRIAL (Photos upon request)**

Chairwoman Elaine Luria  
VA Subcommittee on Disability Assistance and Memorial Affairs

Congressman Mike Bost  
VA Subcommittee, Ranking Member

Congressman Greg Steube (Fl)  
H.R. 1628 Author

Greetings Congresswoman Luria, Congressman Bost and Congressman Steube.

First, I would like to thank the three of you for your military services. Thank you for allowing me to present my testimony on H.R. 1628. With all due respect I am not an expert on dose reconstruction and the effects of exposure to ionizing radiation. I am just an old retired Sergeant, from the U.S Army. I served six months on Lowja Island from Oct 1977 to April 1978.

Lowja island is one of the 11011hern islands within the Enewetak Atoll. Yes, there is a difference between Enewetak Island and Enewetak Atoll. Enewetak Island is in the southernmost part of the Ato ll.

I arrived on Enewetak island on October 1977 and on the next day I took a two-hour boat ride to Lowja Camp on Lowja island where we lived for six months. One of my first assignments was to drain the sea water out of the crater on Runit island. No protective gear just military shorts, rubber boots, and maybe a dusk mask. Our decontamination procedure at that time was to jump into the shallow part of the lagoon and that was it.

To make a long story short, we were tasked to remove radiated debris from different islands and bury them in the crater on Runit island which our men poured concrete to cap off the crater on ground zero. There are videos today that shows us working on top or above the crater as we wore shorts and some without shirts due to the unbearable heat, well for some since I am from Guam, I was somewhat accustomed myself.

In 1980 the Marshallese people were allowed to move back to the islands that we have cleaned and were deemed contaminated at that time. Then a year later they were removed from the same islands due to reports that indicated that they were being exposed to high levels of radiation. Today there are only two islands that are occupied by the Marshallese people in the southern part of the Enewetak Atoll.

Some reports from the Department of Energy and the National Academies of Science have reported that the Runit Dome today is still reading high levels of radiations after fifty (50) years which we carried with bare hands and buried the debris in the Runit dome.

Honorable Chairwoman Luria, as I said earlier that I am not a scientist nor a physician only a U.S. Veteran who served on Lowja to cleanup radiated debris and help bury them on Runic island.

For point of information, the crater on Runit island was from a nuclear detonation in 1958.

H.R. 1628 does not distinguish between Enewetak (the southern island), and Lowja. A study of Enewetak veterans may confuse in addressing the concerns of the veterans who were stationed in Lowja island, where reports confirm high levels of contamination without dispute.

We ask for immediate inclusion of the Lowja veterans in the Atomic Veterans Program without further study or delay. We were never told the risk we were facing while we were doing the cleanup without protective gear. After my assignment to Lowja I was treated at Walter Reed for swollen and bleeding skin and rashes throughout my body. Even then, and through my ultimate disability retirement, they did not correlate what I was suffering with the exposure to nuclear radiation. Only when the Human Radiation Experiments Advisory Committee documents were declassified in 1994 was I able to understand the implications of my exposure.

In conclusion, even though I oppose this study that the National Academy of Science is being asked by the VA in H.R.1628, I humbly request that the National Academy of Science distinguish the difference between the Lowja veterans and the Enewetak veterans for various reasons. One, there is a VA report titled "Radiological Cleanup At Enewetak Atoll" that indicated that, 'veterans participating in cleanup wore protective clothing and radiation dose measuring devices when needed and had regular radiation checks.' In addition, the report further indicated that, "veterans who participated in the cleanup at Enewetak Atoll encounter low levels of radiological contamination and have a low risk of health problems." Second, earlier reports prior to the cleanup mission indicates that the northern islands have high levels of radiation and Plutonium and that was the main concern from the U.S. Government prior to returning the Marshallese people to the same islands that were used in the Pacific Nuclear Testing. Today there are roughly over 600 living veterans that were part of the cleanup and just a few months ago Mr. Paul Laird passed away from his fight with his fifth Cancer. Mr. Paul was from Maine and was stationed on Lowja in 1977.

It is evident that there are conflicting reports with inaccuracies that states that we were exposed to low levels of radiation which, in fact there are numerous reports indicating that these islands that we worked on daily were highly contaminated with Strontium 90, Cesium 137, and Plutonium.

With your military experience and expertise I am hoping that logic and reason may prevail in your decisions in determining whether a study is necessary since we do have a bill, H.R. 1377, that will actually serve the veterans in receiving their VA benefits from their exposure to high levels of radiation during the cleanup at Enewetak Atoll. Thank you and may God bless!

Robert N. Celestial  
Sergeant U.S. Army Retired (D.A.V.)

Enclosure : Seven (7) Enewetak photos

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Attachment to my Testimony on H.R. 1628 April 29, 2019

Chairwoman Elaine Luria  
VA Subcommittee

Greetings, to you and all the Committee members. I am submitting this attachment to clarify my opposition to H.R. 1628. I believe that a study is important for all the veterans that conducted the cleanup on Enewetak Atoll. First, I would like to say that I have not found one report stating or acknowledging us the Lowja Veterans. Second, we were stationed on the Northern tip of the Atoll (Enewetak) and we were basically the ones that did all the moving of debris and contaminated soil from one Island to the Runit Island Dome. It is also important to know that Enewetak Island not (Enewetak Atoll) is located at the Southern most part of the Atoll. H.R. 1628 mentions "Enewetak Cleanup Veterans and a study on Enewetak Veterans. We are afraid that we the Lowja Veterans may be bypassed on this study or grouped in with the Enewetak Island Veterans which numerous reports have stated the Southern most Islands do read low level radiation. My request is that there is a distinction between the two Islands Lowja and Enewetak Island in any study.

If it may help, 43 nuclear and Hydrogen bombs were detonated in the Northern part of the Atoll and Runit Island being one of them that created a huge crater. The Crater was full of seawater when I arrived on Lowja Island and Me and my fellow veterans were ordered to drain the water out of that crater, so we could build the dome. Knee deep in mud, sand and exposed to radiated seawater is what we experienced, and it is not the study or Bill I am opposed to, it is the distinction between us the Lowja cleanup veterans being mistaken for the Enewetak Island Veteran. Thank you and May God bless us all!

Robert N. Celestial  
Sgt, U.S Army retired

