

Congress of the United States  
House of Representatives  
Washington, DC 20515

December 9, 2024

The Honorable Lloyd J. Austin III  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Austin,

On September 24, 2024, you were sent a letter expressing grave concern pertaining to potential violations of due process and the Joint Ethics Regulations by U.S. Navy senior leaders who failed to properly and unbiasedly investigate the death of Seaman (SN) Kyle Mullen. The letter outlined how the unchecked ethical violations and corrupted investigative process led to the U.S. Navy erroneously implicating the command decisions of Captain (CAPT) Bradley Geary and CAPT (select) Erik Ramey as the key causes of the untimely death of the service member.

In the September 24<sup>th</sup> letter, we directed you to initiate a personal investigation, brief Congress, and issue a report on all allegations pertaining to any misconduct uncovered by the Department of Defense (DoD) relevant to this matter. Due to the DoD's failure to furnish even an interim response or establish a timeline for a response to our serious concerns, we are reiterating our demand for an investigation before being forced to take additional compulsive action. We also asked that you immediately mandate SECNAV Del Toro cancel the Board of Inquiries (BOIs) and exercise your delegated authority to approve their voluntary retirements with full honors at their present grade and rank with no reduction in retirement grade. Not only have the BOIs not been cancelled, but we have since learned of additional acts that would constitute attempts to suppress CAPT Geary's and CAPT (select) Ramey's ability to effectively defend themselves at the upcoming BOIs.

Please add the following to your list of actions to investigate:

- 1) **Potential attempt to tamper with CAPT Geary's communication with Congress in contradiction to SECNAV INSTRUCTION 5370.7E<sup>1</sup> and 10 U.S. Code § 1034<sup>2</sup>**- On September 24, 2024, (the day the letter was released), CAPT Geary was ordered by the NSWC Chief of Staff, to attend a meeting with Rear Admiral, Milton Sands III, Naval Special Warfare Command, and was told **"While you may ask to bring an attorney with you, RADM Sands will deny it as it doesn't pertain to this meeting."** The legal team objected to the exclusion of counsel as a violation of CAPT Geary's right to counsel within the BOI process, and CAPT Geary arrived at the designated time and place with his military attorney present. After several minutes, the RADM's

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<sup>1</sup> [Microsoft Word - SECNAVINST 5370.7C MWB signed final.doc](#)

<sup>2</sup> [10 U.S. Code § 1034 - Protected communications: prohibition of retaliatory personnel actions | U.S. Code | US Law | LII / Legal Information Institute](#)

staff informed CAPT Geary that the Admiral had cancelled the meeting. Minutes later CAPT Geary received various texts from the Chief of Staff and Deputy Chief of Staff apologizing for the so-called miscommunication. It is understood that this meeting was to attempt to limit CAPT Geary's protected communication rights with members of Congress.

Given the significance of this matter and the Congressional oversight responsibilities at stake, we formally request that the Secretary of Defense exercise his authority to either:

- **Release the Safety Investigation Report in its entirety to Congress**, as permitted under his discretionary authority, or,
- **Initiate the procedures outlined in DoDI 6055.07, Enclosure 5**, to arrange for a briefing of the privileged safety information for the Chairman and Ranking Minority Member of the House or Senate Armed Services Committees.

This request is made to ensure transparency and accountability in matters involving loss of life and to support our ongoing oversight functions in this case. We respectfully urge the Secretary of Defense to act promptly to facilitate access to this critical information under the guidelines and protections established by DoDI 6055.07.

- a. If there was a briefing provided on or around July 2022 regarding the Safety Investigation Report that did not include privileged information, we would like a copy of that briefing provided to us as the command would have sent a PDF prior to conducting the command meeting on the subject.

2) **Wrongful Withholding of BUMED Quality Assurance Investigation Report** -

On October 11, 2024, despite being notified that CAPT Geary's alleged misconduct included failure to maintain adequate medical oversight during high-risk training, CAPT Geary's legal team was informed that the Bureau of Medicine and Surgery (BUMED)'s Quality Assurance Investigation (QAI) report related to SN Kyle Mullen's death would not be released. This refusal was based on the assertion that the report is privileged under 10 U.S.C. § 1102. The QAI investigation focused on whether the medical care provided to SN Mullen was adequate and whether there was any failure in oversight or delivery of care. These issues are directly relevant to the allegations against CAPT Geary and his defense. The report's findings include favorable information for the defense, indicating that the medical providers assessed in the review are still practicing medicine and that the report likely found no systemic wrongdoing by the command, including CAPT Geary. While BUMED asserts the report is privileged, 10 U.S.C. § 1102(c)(1)(C) permits disclosure of medical quality assurance records to governmental boards for the purpose of monitoring professional standards of care. CAPT Geary's Board of Inquiry (BOI) meets this standard, as it is evaluating his professional oversight responsibilities. Furthermore, 10 U.S.C. § 1102(c)(2) explicitly states that such records may not be withheld from Congress when

requested within its oversight jurisdiction. BUMED's determination to withhold the report is therefore erroneous.

To ensure transparency and fairness, we request that the Secretary of Defense:

- a. **Release the QAI report to the BOI for CAPT Geary**, as authorized under § 1102(c)(1)(C), to allow for a full and fair review of the allegations.
- b. **Facilitate Congressional access to the report**, as permitted under § 1102(c)(2), or arrange a briefing for relevant oversight committees.

This report is essential to resolving the serious allegations against CAPT Geary and ensuring accountability within high-risk Naval training operations.

- 3) **Violation of 10 USC 1182: Boards of inquiry, that states, the BOI shall give a fair and impartial hearing to each officer required under section 1181 of this title**<sup>3</sup>— Under 10 U.S.C. § 1182, Boards of Inquiry (BOIs) must ensure a fair and impartial hearing. In CAPT Geary's case, delays in providing critical evidence initially prevented his legal team from meaningfully preparing a defense. Although the BOI was ultimately postponed to January 2025, these delays—coupled with investigative deficiencies and prejudgment by the Region—raise serious questions about the fairness and impartiality of the proceedings. The upcoming transition to a new administration in January further underscores the importance of reevaluating these issues to ensure that the BOI operates within the bounds of fairness and constitutional traditions respecting the upcoming transfer of power.
  - a. On October 21, 2024, after repeated attempts, CAPT Geary's legal team was granted access to autopsy materials critical to determining SN Mullen's cause of death. Despite their forensic expert's readiness to begin analysis, the Armed Forces Medical Examiner (AFMES) has only recently sent the materials, and despite specific requests, has yet to provide a list of the drugs that they tested for during the autopsy. This is obviously relevant for a case in which suspected illegal drugs and used needles were found SN Mullen's possession immediately following his unexpected death. While the continuance to January 2025 allows for some preparation, this delay continues to hinder the defense's ability to begin building its case in a timely manner and reflects broader investigational failings.
  - b. On October 23, 2024, CAPT Geary's legal team asked NCIS whether it had tested the suspected illegal substances found in SN Mullen's backpack and vehicle. The Region confirmed that NCIS had not conducted an analysis and was only beginning to explore testing options. To date, the Defense has been given no update as to whether or when these drugs will ever be tested. Given the sudden and unexpected nature of SN Mullen's death, his recent medical clearance, and the presence of potentially controlled substances, testing these materials should have been a first step. This raises concerns about procedural competence, fairness in the proceedings, and even potential malice in the prosecution of CAPT Geary's case.

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<sup>3</sup> [10 USC 1182: Boards of inquiry](#)

## TAKEAWAYS:

1. The U.S. Navy has unjustly denied reasonable and lawful access to evidence, including the Safety Investigation Report (SIR) and the BUMED Quality Assurance Investigation (QAI) report, which likely contain information that vindicates CAPT Geary and CAPT (Select) Ramey from the erroneous charges regarding SN Mullen's cause of death. These denials obstruct the defense and undermine transparency and accountability in the proceedings.
2. Despite alleging "cause of death" as a basis for charges against CAPT Geary and CAPT (Select) Ramey, the U.S. Navy failed to test critical evidence—specifically, the vials of suspected unprescribed drugs found in SN Mullen's possession—after nearly three years of investigation. This investigational malpractice, combined with the preemptive accusations, suggests a predetermined outcome aimed at implicating CAPT Geary and CAPT (Select) Ramey as responsible parties, regardless of evidence.
3. The Chief of Naval Personnel (CNP), Vice Admiral (VADM) Cheeseman, is the Show Cause Authority for the BOI and personally signed the notice of Board of Inquiry, which, according to attorneys who have worked at CNP, is a significant departure from standard practice in high-profile cases (e.g., Fat Leonard, USS McCain & USS Fitzgerald Collisions, Red Hill). Given VADM Cheeseman's personal implication in the initial communications alleging ethical violations by CAPT Geary, this represents a clear conflict of interest that casts doubt on the impartiality of the process.
4. Given the serious procedural deficiencies, investigational failures, and apparent conflicts of interest, the BOI should now, at the very least, be postponed and reevaluated by the next administration in January 2025 to ensure it is handled with fairness, impartiality, and the accountability required by law and tradition.

Even though a continuance for the Boards of Inquiry (BOIs) was granted, the concerns raised in our September 24, 2024, letter—now compounded by the additional issues outlined here—demand immediate action. We again urge you to mandate that SECNAV Del Toro cancel the BOIs and allow CAPT Geary and CAPT (Select) Ramey the opportunity to retire without further unjust delays. For nearly three years, they have endured administrative hold, unable to promote or retire, despite the absence of any quantifiable evidence of leadership failure. In fact, a nearly 70-page document from the previous Commander, Naval Special Warfare Command cannot point to a single policy, procedure, or instruction that was violated by NSWBTC or NSWCEN leading up to SN Kyle Mullen's tragic death. It is also highly critical of NETC's investigative integrity.

Meanwhile, evidence continues to mount that the two Admirals in charge of the NETC investigation deliberately published a false report. Despite this, and despite an ongoing Inspector General investigation, one of these Admirals was recently promoted to Vice Admiral—a stark contradiction to the accountability standards

ostensibly applied throughout the Navy. Why is the Navy intent on punishing those who have done no wrong while protecting and promoting those who have violated Joint Ethics Regulations?

We request your response to this letter no later than January 1, 2025, to ensure that appropriate measures are taken to preserve the impartiality and integrity of the BOI process and restore confidence in the Navy's commitment to justice and accountability.

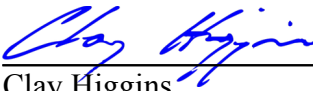
Sincerely,



Brian J. Mast  
Member of Congress



Guy Reschenthaler  
Member of Congress



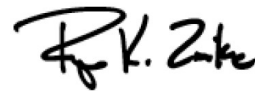
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