UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES	)	
	)	
v.	)	Case No. 1:21-cr-647
	)	
BURLEW	)	
_____	)	

DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

Defendant Benjamen Burlew, by and through counsel, hereby files this Motion to Vacate his Guilty Plea, entered on May 30, 2024.

On May 30, 2024, Benjamen Burlew pled guilty to one count of assault, resisting or impeding certain officers in violation of 18 U.S.C. 111(a)(1). Sentencing is set for September 20, 2024. Defendant now moves to withdraw his plea for the following reasons: (1) at the time of the plea he was subjected to inhumane torture and was promised by his lawyer that the torture would only stop if he accepted the plea deal; (2) he was told by his lawyer that his wife had reviewed and approved the deal, when in fact she had not; (3) his lawyer had refused to offer an insanity defense at trial over his wishes; (4) at the time of the plea deal trust between him and his lawyer had completely broken down, and he has since retained new counsel.

Prior to accepting the plea deal, Mr. Burlew was scheduled for trial in December of 2023. A pretrial conference was set for November 30, 2023. Mr. Burlew's attorney at the time was aware that Mr. Burlew is a disabled veteran with severe physical and mental disabilities. Mr. Burlew fought bravely as an Army Ranger for nearly a decade in Iraq and Afghanistan. He survived over 500 firefights. In 2007, Mr. Burlew broke his back when he fell off of a mountain in Afghanistan during a firefight, only surviving by the Grace of Almighty God. After breaking his back, he continued to fight for another two years in Afghanistan, and was finally brought

back to the United States in 2009 as a hero and awarded the Bronze Star with Valour, along with several other honors, and honorably discharged. Upon returning to the United States, like thousands of veterans from foreign wars, he fell victim to the scourge of drug addiction, but once again, with God's help, he was able to climb from the dark abyss of addiction into the light of recovery. He now lives with his wife and three minor children in a rural area outside of Tulsa, Oklahoma. Because of his severe PTSD and constant chronic pain, he was found by the Veterans Association to be fully disabled. He rarely travels more than 45 minutes from home by car, and when he does, he must constantly stop to stretch. He sometimes has bouts when his PTSD acts up and causes him to retreat from the world for several days. This is all well documented by the federal government's Veterans Association.

Mr. Burlew's attorney was aware of all of this in November of 2023. Mr. Burlew asked his attorney if the pretrial conference could be held remotely by zoom. Mr. Burlew's attorney refused to request that the Court hold a remote hearing and instead insisted that Mr. Burlew attended in person. Mr. Burlew told his attorney that it would be extremely difficult to travel to D.C. because of his disabilities and asked if any other arrangements could be made. His attorney said there were no alternatives, the Court does not allow zoom anymore, and Mr. Burlew has no options but to travel to Washington, D.C. on his own. Following his attorney's advice, Mr. Burlew left his wife at home with the three minor children, and set out for Washington, D.C. with sufficient time to attend the hearing.

On the way, Mr. Burlew suffered a serious mental health emergency that caused him to stop along the way, miss the pretrial conference, and eventually return home. For several days, Mr. Burlew was missing due to the mental health emergency. His wife did not know where he was and was extremely worried about him. His attorney did nothing to try and locate him and did

not effectively explain the situation to the Court. After the pretrial conference, Mr. Burlew's attorney did not even attempt to contact Mr Burlew for several months and never advised him as to what steps needed to be taken or as to what the consequences were for missing the pretrial conference. The only communication the attorney sent from November 2023 until Mr. Burlew was arrested in May of 2024, was an email with a generic office holiday card. The public Docket merely stated that the trial was vacated, but no other information was provided. No efforts were made by pretrial services or law enforcement to make contact with Mr. Burlew or his wife for several months until May 8, 2024. At that time, contact was made with Mr. Burlew's wife and she and Mr. Burlew immediately and without hesitation agreed to comply with whatever was necessary. Law enforcement told them that they would need to appear at a hearing on May 13, 2024, and that he could appear voluntarily. There was no need for him to be taken into custody or even escorted by law enforcement to the hearing. Mr. Burlew appeared voluntarily at the hearing in Tulsa, Oklahoma on May 13, 2024, as he said he would.

At the hearing, the Court ordered that he be detained for the sole reason that "the government has shown by a preponderance of the evidence that no condition or combination of conditions will reasonably assure defendant's appearance as required." Tr. at 34, 2-7.

Mr. Burlew was then taken into custody. He was sent to a local prison in Oklahoma for a few days, then transferred to another Oklahoma prison. He was then transferred again to Washington, D.C. During the transfers, Mr. Burlew was forced to endure several hours long car rides in chains and without breaks. No account was taken for his documented physical or mental disabilities. The rides were excruciatingly and indescribably painful for Mr. Burlew. One of his disabilities is rheumatoid arthritis which causes chronic pain and swelling in his joints. Another of his disabilities is chronic back pain, which requires that he move around to alleviate the pain.

He has not traveled by car for more than 45 minutes at a time for many years, and has only traveled by plane one or two times since he was discharged from the military, and when he has traveled he requires large doses of prescription pain medication. None of that was provided. Not a single accommodation was made for nor was any consideration given to his many disabilities.

When he reached Virginia, one of the other prisoners in the van had a heart attack. This was extremely traumatic for Mr. Burlew. The van had to stop in Virginia overnight.

When he arrived in Washington, D.C., he was taken to the Central Detention Facility. This is the same CDF that Judge Royce Lamberth held in contempt in *United States v. Worrell.* He was put into a small cell and was held there without break for 72 hours straight. It was 90 degrees in the cell. There was a leaky toilet causing a flood of toilet water in the cell. There were rats scurrying across the floor through the sewage, and water bugs the size of apricots crawling throughout the cell. For 72 hours straight, from May 21 through May 23, he was locked down in that cell, stripped down to nothing but his underwear because of the sweltering heat, and confined to his cot because of the sewage and vermin. He was not given any commissary, any medication, any medical attention, any mental health care, or any change of clothing. No efforts were made to assess his disabilities or his general health or to make accommodations for this disabled veteran. He was in complete shock. Just days earlier he was at home with his wife and children. Then, suddenly and without warning, he was thrown into the worst circumstances that he had to endure since he was in Iraq and Afghanistan. Mr. Burlew was not even provided with a Bible. He sincerely believes in God Almighty and finds comfort in reading God's word, and was not provided with this basic essential, even after making several requests.

It was then that his lawyer first came to visit him. His lawyer told him that "the judge is pissed off" and that there was "no way that the judge would ever grant him bond" and that the

only way he would ever see his wife and children again was if he agreed to a plea deal. It was based on this advice and under these conditions, that Mr. Burlew agreed to a plea deal. However, he insisted that he would not sign any deal unless his wife first reviewed and approved the deal. His lawyer did not send the deal to his wife until after it was signed on May 28. His lawyer lied to him and told him that his wife had reviewed the deal and had approved it.

It was under these conditions that Mr. Burlew appeared in court on May 30, just two days after he signed the plea deal, without any time to reconsider or even have a substantive discussion about it with his wife. When he appeared in court, he had just come from the conditions described above. The only thing he could think about was seeing his family again. He did not mention his conditions of confinement at the hearing because his lawyer had given him the impression that if he complained about it, he would just enrage the judge further. He also believed based on what his lawyer told him, that if he kept his mouth shut about the conditions of confinement that he could at least be moved to the Central Treatment Facility (CTF) after the hearing and he did not want to jeopardize that possibility. He had been told that the CTF was the Garden of Eden compared to the CDF where he was living in sweltering heat, sewage, and among vermin with no change of clothes, locked down for 23 hours at a time during the week and 72 hours at a time over the weekend. He eventually learned that CTF was no Garden of Eden, but not for another 11 days after the hearing. He remained for another 11 days in the CDF under the same conditions and still without his Bible, even after the court expressly ordered that he be given a Bible. He was only moved after his wife complained directly to the jail, the warden, the mayor of D.C., and the head of the Department of Corrections.

LEGAL STANDARD

Under Federal Rule of Criminal Procedure 11, a defendant is permitted, before a sentence is imposed, to withdraw a guilty plea if the defendant can show "a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B); *United States v. Jones*, 472 F.3d 905, 907 (D.C. Cir. 2007). While presentence withdrawal motions should be "'liberally granted,' they are 'not granted as a matter of right.'" *United States v. Thomas*, 541 F.Supp.2d 18, 23 (D.D.C. 2008) (quoting *United States v. Ahn*, 231 F.3d 26, 30 (D.C. Cir. 2000)). The decision to grant a withdrawal is within the trial court's discretion. *United States v. Tolson*, 372 F.Supp.2d 1, 8 (D.D.C. 2005).

When ruling on a motion to withdraw a guilty plea, courts in this Circuit consider the following factors: "(1) whether the defendant asserted a viable claim of innocence; (2) whether the delay between the guilty plea and the motion to withdraw has substantially prejudiced the government's ability to prosecute the case; and (3) whether the guilty plea was somehow tainted." *United States v. Taylor*, 139 F.3d 924, 929 (D.C. Cir. 1998) (internal quotation marks omitted). The third factor is viewed as the "most important." *Id*. (internal quotation marks omitted).

Where the record does not support the conclusion that a guilty plea was knowing, intelligent, and voluntary, the plea must be set aside. *McCarthy v. United States,* 394 U.S. 459, 466 (1969) (if a plea is not "voluntary and knowing, it has been obtained in violation of due process and is therefore void"); For a guilty plea to pass constitutional muster, the record must make an "affirmative showing" that the defendant waived his constitutional rights knowingly, voluntarily, and intelligently. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *see also Parke v. Raley*, 506 U.S. 20, 29 (1992). "A plea is not voluntary or intelligent," and therefore

unconstitutional, "if the advice given by defense counsel on which the defendant relied in entering the plea falls below the level of reasonable competence such that the defendant does not receive effective assistance of counsel." *United States v. Loughery*, 908 F.2d 1014, 1018 (D.C. Cir. 1990). To withdraw a plea on this basis, a defendant must ordinarily satisfy the two-pronged standard of *Strickland v. Washington*, 466 U.S. 668, 687 (1984), for violations of the Sixth Amendment guarantee. *See Hill v. Lockhart,* 474 U.S. 52, 57-60 (1985); *United States v. Holland,* 117 F.3d 589, 594 (D.C. Cir. 1997); *United States v. Horne*, 987 F.2d 833, 835 (D.C. Cir. 1993). A defendant must therefore show first, that his counsel's performance "fell below an objective standard of reasonableness" by identifying specific "acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." *Strickland,* 466 U.S. at 687-88, 690. Second, a defendant must demonstrate that the deficiencies in his representation were prejudicial to his defense. *Id*. at 692. He "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59.

A guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void. *Machibroda v. United States*, 368 U.S. 487, 493. A conviction based upon such a plea is open to collateral attack. *See Walker* v. *Johnston*, 312 U.S. 275; *Waley* v. *Johnston*, 316 U.S. 101; *Shelton* v. *United States*, 356 U.S. 26, reversing, 246 F.2d 571, 572 n.2 (5th Cir. 1957).

ARGUMENT

The plea deal is "tainted" because at the time of the plea deal the Defendant was subjected to inhumane torture and his lawyer threatened that the only way to end the torture was by accepting the plea deal.

Mr. Burlew, was under extreme duress when he signed the plea deal. He is mentally disabled with PTSD to begin with. His inhumane conditions of confinement exacerbated the

situation. His lawyer's ineffective advice made it even worse. Under these circumstances the plea deal is "tainted." He was ready to go to trial in December of 2023. He made an effort to appear at the pretrial conference. He was prevented from doing so by what should have been an excusable medical emergency. His lawyer should never have allowed the situation to begin with, and he should have asked for a remote conference, which is routine in January 6 cases, and every conference to that point had been by zoom. There were options that could have been explored, as to how to get him safely to D.C. or else how to inform the Court that there was an excusable emergency. His lawyer did not effectively explain to the Court what had occurred. He never checked in with Mr. Burlew's wife to find out if Ben made it home safely or to inquire as to what had happened.

It was this lack of communication that made the detention and incarceration on May 13, 2024 such a shock. The FBI contacted his wife and told her that he could appear voluntarily in court. They made no efforts to arrest him. He had no reason to believe that he would be detained after the hearing and taken away from his family indefinitely and subjected to unimaginably inhumane conditions. He suffered excruciating pain and psychological trauma as he was moved from jail to jail over several days in long car rides chained and bound without being able to contact his family. During one of the long car rides a man sitting right near him suffered a heart attack. During this period of time, he lost 20 pounds. When he told one of the guards in CDF, they just callously and cruelly ridiculed him and laughed at him and said, "it's a great weight loss program."

He was locked in CDF in the most horrifying conditions described above. He was locked down in the cell for 72 hours straight after he arrived. It was then that his lawyer offered him a

plea deal, telling him he had better take it because it was the only chance for him to get out and be home with his family. These circumstances objectively taint the plea deal.

Undersigned counsel contacted the Government to meet and confer before filing this motion. He asked if the Government had any evidence or reason to believe that the conditions described above were exaggerated or if any portion of Mr. Burlew's account was false. They refused to provide any contradictory evidence or even a reason to doubt Mr. Burlew's account.

This smacks of Soviet style tactics whereby dissidents were brought to jails and forced to sign confessions under inhumane conditions and threats that unless they cooperated they would die in captivity. *See, e.g.,* Nathan Sharansky, *Fear No Evil: The Uplifting and Historic Account of a Single Man Who Triumphed Over a Police State and in the Process Changed it Forever*, Random House (1988). This plea deal is obviously tainted. Mr. Burlew had opted to go to trial and only signed the deal after he was in prison for two weeks under unimaginably horrific conditions.

Mr. Burlew has now retained new counsel. He respectfully requests that the Court revoke the plea deal and grant Mr. Burlew the opportunity to either exercise his right to a trial or else consider a plea deal with his new attorney that he trusts, under less torturous conditions.

Defendant Argues that he has a Viable Claim of Innocence

The Veterans Association has well documented Mr. Burlew's severe PTSD as a result of fighting on behalf of our Country for over a decade in Iraq and Afghanistan. He has a viable insanity defense. He insisted that his prior attorney raise this issue but his prior attorney, for reasons unknown, refused to do so. If the plea is revoked, Mr. Burlew plans on raising this defense with his new attorney.

The Government is not prejudiced if the plea deal is revoked.

As a final factor, the Court considers whether or not the delay between the guilty plea and the motion to withdraw has substantially prejudiced the Government's ability to prosecute the case. In the January 6 context the Government cannot show prejudice as for the last three and a half years it has been constantly litigating hundreds of similar January 6 cases. It has an entire unit dedicated solely to these prosecutions.

Mr. Burlew was coerced into this plea deal on May 30. Just over 30 days later, he fired his prior attorney. One day later his new attorney entered an appearance. On July 15, his new attorney gave notice to the Government by email that Mr. Burlew had instructed him to move to revoke the plea deal, and that this motion was forthcoming. Over the next two weeks, undersigned counsel gathered information and drafted this motion.

There is no prejudice to the Government if Mr. Burlew decides to go to trial rather than accept a plea deal.

CONCLUSION

For the foregoing reasons, Mr. Burlew respectfully requests that the Court revoke his plea deal entered on May 30, 2024.

Dated: July 31, 2024

Respectfully submitted

/s/ Jonathan Gross
Jonathan Gross
2833 Smith Ave., Suite 331
Baltimore, MD 21209
(443) 813-0141
jonathansgross@gmail.com

CERTIFICATE OF CONFERENCE

I hereby certify that I met and conferred through email exchanges with the Government before filing this motion.

/s/ Jonathan Gross

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2024 the foregoing was served on all parties by CM/ECF.

/s/ Jonathan Gross

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES,	)	
	)	
v.	)	Case No. 1:21-cr-647
	)	
BURLEW	)	
	)	

DECLARATION OF ATTORNEY BENJAMEN BURLEW

Pursuant to 28 U.S.C. § 1746, I, Benjamin Burlew, hereby declare as follows:

1. I am currently being held in the D.C. Jail's Central Treatment Facility (CTF) in Washington, D.C.

2. I was arrested on August 19, 2021, for my participation in the events of January 6, 2021.

3. I am a fully disabled veteran. I fought for this country as an Army Ranger. I was deployed after September 11, 2001 to Iraq and Afghanistan where I served as a combat warrior until 2009. During that time, I was engaged in over 500 firefights. In 2007, while engaged in a firefight, I fell off of a mountain. As a result, I broke my back and suffered other severe injuries that I continue to suffer from to this day and will suffer from for the rest of my life. By the Grace of Almighty God, Our Father in Heaven, Creator of the Heavens and Earth, I was not killed that day. I lost so many friends in combat I cannot even count. Because I was still able to walk after I fractured my back, I remained in combat for another 2 years and continued fighting. The army provided me with pain pills and kept me in action because I was needed. As a result, my back fused incorrectly and did not heal properly.

4. I was sent home to the United States in 2009. I received several honors for my service, including the Bronze Star Medal with letter "V" device; Army Commendation Medal with

2 bronze oak leaf clusters; Army Achievement Medal with 1 bronze oak leaf cluster; Good Conduct Medal, 2nd award; National Defense Service Medal; Overseas Service Ribbon; Combat Infantryman Badge 1st Award; Expert Infantryman Badge; Marksman Badge with Grenade Bar and Rifle Bar; Parachutist Badge-Basic; Ranger Tab; Global War on Terror Service.

5. I have been diagnosed with severe PTSD. It is well documented by the VA. Attached as Exhibit A is a decision by the Department of Veterans Affairs documenting my many physical and mental disabilities.

6. After I returned home, unfortunately, like many veterans, I fell victim to drug addiction. It was only with God Almighty's help and grace that I was able to recover. To this day I suffer from PTSD and withdrawal and I take comfort and shelter under God Almighty's wings by reading from the Bible.

7. When I was arrested on August 19, 2021, the officers grabbed me and tried to cuff me behind my back. This would be excruciatingly painful for me because of my injuries. I tried to explain that to the officers but they would not listen. As they pulled my hands behind my back, I involuntarily struggled for a few moments. Nobody was hurt, I did not strike out at anyone. I called out my social security number and my name because that is what you are instructed to do in combat when you are being detained. I was trying as best as I could to signal to the officers that I was willing to be detained, but the issue was simply how I was to be handcuffed. I called out over 15 times "cuff me in the front, cuff me in the front!" I otherwise verbally tried to explain to the officers why I was struggling and repeatedly begged them to cuff me with my hands in front. Eventually, one of the officers, who also served in the Army, had mercy and uncuffed me from behind and cuffed me in the front because he realized how much pain I was in. My intention was never to resist arrest and it would have been objectively obvious to anyone observing the situation that I

did not intend to resist arrest, but rather I was just trying to get the officers to accommodate my severe disabilities and spare me from excruciating and unnecessary pain. The officer's body camera footage will easily confirm that I did not resist arrest.

8. I was ultimately released on my own recognizance. The Government tried to convince the judge that I resisted arrest, but the judge did not believe them. She could clearly see that I was in pain. This is reflected on the transcript. Despite the fact that the judge at that time did not believe the government, to this day they continue the lie that I tried to resist arrest.

9. For a year and a half there was not a single issue with my release.

10. I complied with every condition of release. There were no complaints to the contrary from the pretrial coordinator assigned to my case. His name is Aaron Tyler and he never mentioned that there was even the slightest problem or issue.

11. My attorney, Robert Jenkins was terrible. He was appointed by the court. I have never been in trouble before in my life and have never needed a criminal attorney, so I did not know what to expect. He did absolutely nothing for me. He did not provide me with my discovery. In fact, he told me that he was not given discovery. He met with me by zoom twice to show me some videos. The meetings were about 30 minutes. These meetings were in February or March of 2023. We arranged initially to meet by zoom every Wednesday while my children were in gymnastics. In those two meetings he showed me only open source video that I could find myself online. He did not show me any body camera videos. I had many questions and he would not answer them. I pointed to individuals and said I want them to be witnesses, how can we find out who they are? He said there is nothing we can do. He said that we cannot get any more discovery or ask the Government for anything. I told him that I wanted him to raise my PTSD as a defense. He adamantly refused to do so. He then ignored all of my other requests. He told me that he was

only permitted to use evidence provided by the Government. I knew that to be false. Trial was scheduled for December of 2023. I did not see him again or speak to him again from March until September or October. After March, we did not have a single substantive conversation about my defense. He did not prepare me at all for the trial. I doubt that he did any preparation for the trial at all.

12. A pretrial conference was scheduled for November 30, 2023. I asked Jenkins if he could ask the court if I could appear by zoom. He refused to ask the court. Instead, he told me that I must appear in person and that there is no alternative and that the court doesn't do zoom meetings anymore. I told him that I had a big problem in getting to the court for the pretrial conference. We don't have a lot of funds. I am fully disabled and me and my wife and three children live mostly on my disability. Further, I have not flown in many years. Flying is incredibly difficult for me and can only be done with lots of pain medication which I prefer not to take because I am a recovering addict. I also rarely drive more than 45 minutes away from my home because of my disabilities. I have chronic back pain and rheumatoid arthritis that make travel extremely difficult. I did not know anyone who could drive me. My wife could not leave the children at home. We don't have a friend who could take the time to drive me, and we could not afford a driver. I told all of this to Jenkins. He did not offer any alternatives or any advice other than that I had to get there. So I decided to attempt to drive myself. I left with plenty of time to arrive for the conference on November 30. On the way, I had an unforeseeable mental health emergency. My PTSD was triggered in a way that I had not experienced in many years, since 2019, due to the anxiety of the upcoming trial that I did not feel prepared for and that I did not think my lawyer was prepared for, together with the anxiety of driving on my own for the 17 hour drive. I stopped the car and blacked out. After several days I made my way back home. I had a breakdown that I did not recover from

for several months. Part of that was the anxiety that my lawyer did not call. Every day my wife and I checked the docket to see if there was an update, but there were none. If there had been one, I would have complied with whatever I was instructed to do. During that time, Jenkins did not call me even one time. His office sent a generic holiday greeting card sometime around December. He did not advise me what to do. He did not tell me what the consequences were for missing the hearing. He didn't even tell me what happened at the hearing or what he told the judge or what the judge told him. To this day, I don't know what happened at that hearing.

13. My wife looked at the docket after the hearing and all it said was that the trial was vacated. I was not contacted by the Government or the Court or my pretrial coordinator. I didn't hear from anybody until May 8, 2024.

14. On May 8, 2024, my wife told me that the Government had reached out to her. I was told that I could appear voluntarily at a hearing at the Federal Court in Tulsa, Oklahoma on May 13, 2024. I did exactly what I was told and appeared at the hearing on the date. For the hearing we were given a local public defender. The Court ordered that I be detained.

15. I was suddenly taken into custody in front of my 8-year-old son and my wife. This was completely unexpected. I was not permitted to even say goodbye to him. ***This has severely affected him.*** I still cannot understand for the life of me why they would not let me say goodbye to my 8-year-old son.

16. From the court I was taken to a local jail in Oklahoma. Then a few days later I was moved to another jail in Oklahoma. This was very disorienting. It was also incredibly, unimaginably, and excruciatingly painful for me due to my many disabilities. It was also incredibly traumatizing due to my psychological disabilities. I did not know where I was or what time it was or what day it was. I did not know what my family knew. I did not know if I would ever go home.

I didn't understand what was happening to me. I was then transferred from Oklahoma to Washington, D.C. This was a long drive. We went hours without stopping for a break to stretch or go to the bathroom. I was chained and bound. There were no accommodations for my disabilities. Nobody even asked about my disabilities this entire time. In fact, when I got to the second jail in Oklahoma, I told them immediately that I was disabled, and they just said, "the Board of Prisons will decide." I was not given any medical attention even though it was obvious to anyone who looked at me that I was experiencing unbearable and indescribable pain. When the van came to Virginia, one of the other prisoners on the van had a heart attack. This was one of the scariest moments of my life, and I have served as a combat soldier for over a decade. It was so scary for several reasons. I had to watch this man, bound and chained convulse, grab his chest, gasp for his life, and gasp "I'm having a heart attack! I'm having a heart attack!" Every one of my instincts wanted to get up and help him, but I was bound and chained helplessly myself and in excruciating pain. I also saw my own life flash before my eyes. I thought at that moment that I would die, and my children and my wife would never see me again and perhaps not even hear about how I died. A million terrifying thoughts ran through my mind. I thought I would go insane.

17. That night I stayed in a jail cell at a sheriff's station in Virginia due to the unexpected stop. I did not sleep for even a second.

18. The next morning, I was taken straight to the Court house. I waited in the court house all day in the jail cell. There was nowhere to sit other than a hard bench against a cinderblock wall. I was left alone. I was in incredible pain. I sat there the entire day. At the end of the day, I was told there was no hearing that day, and I was to come back tomorrow.

19. The next day, I was brought back to the court house but I was brought before a magistrate judge. The judge said he could not rule on it. I was then sent back to the CDF.

20. I served in Iraq in Afghanistan for years. I lived in mud huts and shipping containers and in other similar conditions. I held enemy combatants in captivity. I can say without exaggeration that the conditions in the CDF are worse than anything I have ever seen or experienced. Nobody should be held in such conditions. Especially not in the United States of America.

21. First, I was placed in a tiny cell with nothing but a cot and a toilet. The toilet had a leak and there was two inches of toilet water on the floor. I used the blanket to try and mop up the water, but it was a mistake because it didn't make much of an impact, and then I had no blanket. I wouldn't need a blanket anyway because it was 90 degrees in the cell. I had to strip down to nothing but my underwear. I was put in the jail on May 20, 2024. I was not given a change of clothing until June 8, 2024, after my wife complained. I wore the same underwear from May 13 until June 8. The jail also had rats that would scurry across the floor through the toilet water. There were water bugs the size of large apricots.

22. During the week, I was confined to my cell for 23 hours a day and given one hour to shower and call my wife. I was never allowed outside for the entire time I was in CDF from May 20 until June 10 in the evening. Even then, I was only transferred to CTF which wasn't much better, and there I only got outside for the first time for an hour on July 2, and then not again until July 24. On the weekends in CDF, I was locked down for 72 hours straight, confined to my cot, in my underwear, sweating, unable to move, in excruciating pain, disgusted by the toilet water and the rats and the bugs and the stench. Those weekends were unbearable. I didn't even have a Bible. I had nothing but the thoughts in my head.

23. When the guards would turn the lights on in the cell it got hotter in the cell, and it felt like they were cooking me. During the 72-hour weekend lockdowns, sometimes the guards

would leave the lights on for hours and hours at a time. When the lights were off it was cooler, but it was too dark to read unless you sat or lay on the floor and read by the light that came through the tray hole. There was no air conditioning and only a single fan, but some of the prisoners would unplug the fan periodically to use the outlet to smoke drugs. I had to choose between leaving the tray hole open to get some ventilation or covering it up to prevent the odor of the drugs into the cell. I was told that the drugs they were smoking in the jail is fentanyl. How do they even get fentanyl in a locked down facility?

24. I frequently asked for mental health care, but the guards just told me to "quit crying." I was not given any mental health care during the month in CDF, even after a supervisor told me that I could receive mental health care.

25. The guards did not provide grievance forms so the process to complain was not available to us. Even if it were, the grievance process takes weeks and months so there is no recourse for the prisoners. When I got to CTF, I put in many grievances forms, but to no avail.

26. On May 23, Jenkins came to visit. He told me that the judge was "pissed at me" and that there was no way that the judge would grant me bail. He told me that I had no choice but to concede to confinement and he refused to make any arguments on my behalf to get me out. He told me that I would not go to trial for at least another year, which meant to me that I would be locked up for that amount of time, at least. He strongly implied the only way that I could get out would be if I signed a plea deal. I felt that I had no choice but to agree. I told him that I would sign a plea deal and give up my right to a trial if it would get me out of jail and back to my wife and children. But I told him that I would only sign it if my wife reviewed it and approved it. He said he sent it to her. That was false. I found out later that he lied and that he never sent the deal to my wife to review. She only received it after I had already signed it.

27. A hearing was scheduled for a few days later on May 30. My lawyer told me not to raise the conditions of confinement because it would only further enrage the judge who was already "pissed at me." He knew about my conditions of confinement and did not raise them himself. He made me believe that if I just kept my mouth shut, I would get out of CDF and be sent to CTF. I was told that CTF was much better than CDF. It is better, but not by much. I asked my lawyer to at least ask for a Bible as I had been without a Bible for over two weeks. He said he would.

28. At the hearing I answered yes to all of the judge's questions. All I could think about was getting home to see my wife and children, or at least getting moved to CTF. In retrospect, I feel that I was completely coerced into the plea deal. I would not have agreed if not for the circumstances that I was experiencing in the CDF and in everything that had happened to me since May 13. When I was in CDF, it was so miserable and unbearable, that whenever I was let out of my cell, whether for a phone call or for court, all I could think about was how great it was to have some air. I could not concentrate on anything and was not in my right mind at all.

29. Over that time period from May 13 to May 30, I experienced unbearable trauma, physically and mentally. I was deprived of basic nutrients. My nails have become brittle. As I sit here now, I can just peel away my fingernails and they come right off. One of my toe nails just fell right off. I feel as though my body is falling apart. During the transfers and my time in CDF I lost what must have been twenty pounds. When I mentioned it to one of the guards, she was a Lieutenant, she just laughed and said, "it's a great weight loss program." I felt humiliated. Worse, I felt terrified that I was being guarded by people who had no human empathy. It is impossible to imagine that feeling if you have not experienced it yourself.

30. After I signed the plea deal and it was accepted at the hearing, I still was sent back to CDF for another 11 days. During that time, I was still deprived of a change of clothing, and I

was not given a Bible. On the bright side, they did move me out of the cell with the leaky toilet. I was moved to a cell across the hall where I could still see the cell with the leaky toilet. One day, a maintenance man came into the cell. He looked at the toilet for less than one minute. He went to an area behind the cell and opened up a box with a key, turned a faucet, and solved the problem just like that. Me and another prisoner saw this. We just stared with our mouths open. We couldn't believe how easy it was for the jail to fix the problem, and yet they let it persist for days and days while I lived in the cell. We looked at each other and we just started laughing uncontrollably. It was one of the brightest moments during that dark time. There were still rats and giant bugs in my new cell. And it was still 90 degrees. I should mention that I also contracted malaria in the past so my body has a difficult time adjusting to heat. When I moved to the new cell, I was able to scare away the rats and sit on the floor under the sink and every so often drench my head in the sink to regulate my body temperature. I did that every hour for days. This was a great luxury that I did not enjoy in the first cell with the toilet water on the floor. In the new cell, I had the choice to lay on the floor or my cot, rather than just my cot, while I was locked down for 23 hours during the week and 72 hours over the weekend. My arthritis was so bad, I barely slept for the time I was in CDF.

31. On June 10, I was finally moved to CTF. I was put into the pod that is reserved only for January 6 defendants. I was told that a decision was made long ago to segregate January 6 defendants for their safety from the other prisoners. We were recently told that this policy of segregation is going to end. Everyone is freaking out and very scared as to what will happen. On July 26, we demanded to see a Lieutenant. When the Lieutenant arrived, we were told that the policy of segregation is for our safety and security and will remain in place. But we are receiving mixed messages and now we fear that we are going to be mixed with the general population and we fear we may be in danger.

32. I was not permitted out doors to see the sky from May 20 when I arrived at CDF until July 2, and then only for one hour. The next time I was permitted an hour outdoors under the sky was July 23. That is one hour of being outside in 60 days. It is a great day when I am able to see the sun.

33. One of the worst things about the jail is that there is no routine. I would have expected that at the very least, the days would be regimented. Wake up at a certain time, meals at a certain time, medicine at a certain time, shower at a certain time, outdoor rec at a certain time. But there is no set schedule. Every day is different. We never know when our meals are coming. When we will be given our medicine. We don't have a set schedule for outdoor rec. Its completely random. And if you miss it by a second, you cannot go outside. It's very disorienting and makes no sense. It's terrible for my mental health. I benefit from predictability, as do most people.

34. Just writing this down has been in a sense therapeutic but also painful. I am in constant anguish, both physically and psychologically.

35. Everything that I wrote above can be confirmed by many witnesses. If given a chance to testify independently, all of us would tell the same story with the same horrifying details.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 31, 2024

/s/ Benjamen Burlew

Benjamen Burlew

DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Regional Office

BENJAMEN BURLEW

[redacted]

Represented By:
HARRY J BINDER
Rating Decision
10/20/2022

INTRODUCTION

The records reflect that you are a Veteran of the Gulf War Era. You served in the Army from June 14, 2001, to February 5, 2009. You filed a claim for increased evaluation that was received on March 2, 2022. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

1. Entitlement to individual unemployability is granted effective January 20, 2021.

2. Basic eligibility to Dependents' Educational Assistance based on permanent and total disability status is established from January 20, 2021.

3. Evaluation of posttraumatic stress disorder, which is currently 70 percent disabling, is continued.

4. Evaluation of left ankle strain status post fracture, which is currently 10 percent disabling, is continued.

Evidence we have used to grant permanent and total disability status: VA contract examination from QTC dated June 4, 2014; VA contract examinations from VES dated July 21, 2022, and August 17, 2022.

3. Evaluation of posttraumatic stress disorder currently evaluated as 70 percent disabling.

The evaluation of posttraumatic stress disorder is continued as 70 percent disabling.

We have assigned a 70 percent evaluation for your posttraumatic stress disorder based on:
- Anxiety
- Chronic sleep impairment
- Circumlocutory speech
- Circumstantial speech
- Depressed mood
- Difficulty in adapting to a worklike setting
- Difficulty in adapting to stressful circumstances
- Difficulty in adapting to work
- Difficulty in establishing and maintaining effective work and social relationships
- Disturbances of motivation and mood
- Forgetting directions
- Forgetting names
- Forgetting recent events
- Forgetting to complete tasks
- Impaired impulse control
- Impairment of short- and long-term memory
- Mild memory loss
- Near-continuous depression affecting the ability to function independently, appropriately and effectively
- Near-continuous panic affecting the ability to function independently, appropriately and effectively
- Obsessional rituals which interfere with routine activities
- Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood
- Panic attacks more than once a week
- Retention of only highly learned material
- Speech intermittently illogical
- Speech intermittently irrelevant
- Speech intermittently obscure
- Stereotyped speech
- Suspiciousness
- Unprovoked irritability with periods of violence

The overall evidentiary record shows that the severity of your disability most closely approximates the criteria for a 70 percent disability evaluation. (38 CFR 4.7, 38 CFR 4.126)

A higher evaluation of 100 percent is not warranted for a mental disorder unless the evidence

shows total occupational and social impairment, due to such symptoms as:
• Gross impairment in thought processes or communication
• Persistent delusions or hallucinations
• Grossly inappropriate behavior
• Persistent danger of hurting self or others
• Intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene)
• Disorientation to time or place
• Memory loss for names of close relatives, own occupation, or own name. (38 CFR 4.125, 38 CFR 4.126, 38 CFR 4.130)

4. Evaluation of left ankle strain status post fracture currently evaluated as 10 percent disabling.

The evaluation of left ankle strain status post fracture is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your left ankle strain status post fracture based on:
• Painful motion of the ankle (38 CFR §4.59 allows consideration of functional loss due to painful motion to be rated to at least the minimum compensable rating for a particular joint. Since you demonstrate painful motion of the ankle, the minimum compensable evaluation of 10 percent is assigned.)

Additional symptom(s) include:
• Slight limitation of motion of the ankle based on plantar flexion less than 45 degrees

The provisions of 38 CFR §4.40 and §4.45 concerning functional loss due to pain, fatigue, weakness, or lack of endurance, incoordination, and flare-ups, as cited in DeLuca v. Brown and Mitchell v. Shinseki, have been considered and applied under 38 CFR §4.59.

A higher evaluation of 20 percent is not warranted for limitation of motion of the ankle unless the evidence shows:
• Marked limitation of motion of the ankle based on dorsiflexion less than 5 degrees or plantar flexion less than 10 degrees. (38 CFR 4.71a)

5. Evaluation of tinnitus currently evaluated as 10 percent disabling.

The evaluation of tinnitus is continued as 10 percent disabling.

We have assigned a 10 percent evaluation for your tinnitus based on:
• Recurrent tinnitus

A single evaluation for recurrent tinnitus is assigned whether the sound is perceived in one ear, both ears, or in the head.

This is the highest schedular evaluation allowed under the law for tinnitus. (38 CFR 4.87)

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all Veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our website, www.va.gov.