



June 12, 2023

The Honorable Carlos Del Toro
Secretary of the Navy
1000 Navy Pentagon, Room 4D652
Washington, DC 20350

Admiral Michael M. Gilday
Chief of Naval Operations
2000 Navy Pentagon
Washington D.C. 20350-1000

Vice Admiral John V. Fuller
Naval Inspector General
1000 Navy Pentagon
Room 4D652
Washington, DC 20350

Catherine Donovan
Deputy Naval Inspector General
1000 Navy Pentagon
Room 4D652
Washington, DC 20350

Re: Misconduct Complaint: Yeoman Second Class Joshua Kelley

Dear Secretary Del Toro, Admiral Gilday, Vice Admiral Fuller, and Ms. Donovan,

Our military must have the American people's confidence and support. Accordingly, the Department of Defense has required that servicemembers remain above partisan politics, refrain from publicly criticizing the military, behave in a way that reflects well upon the Armed Forces, and comply with restrictions on when the uniform may be worn. Traditionally, all branches of the United States military have acted swiftly to investigate alleged breaches of these restrictions and to impose consequences when warranted by the evidence.

There is strong reason to believe that Yeoman Second Class Joshua Kelley ("YN2 Kelley") has knowingly, materially, and repeatedly violated these critical requirements. As described below, the evidence is that he has repeatedly engaged in partisan activity, behaved in ways that discredit the military, publicly criticized his command, and misused his uniform for personal gain. Based on the Department's

past actions with respect to politically or culturally conservative servicemembers, an investigation is appropriate here.

I. Bringing Discredit Upon the Armed Forces

YN2 Kelley habitually posts graphic sexual materials on his Twitter and Instagram pages, bringing discredit upon the Armed Forces. His Twitter bio currently reads “Sailor / Drag Queen / LGBTQ+ Activities / Military Queer ICON.”¹ And, although YN2 Kelly is purportedly a Pentagon-approved “Digital Ambassador,” his bio does not contain any disclaimers that separate the posts from the official views of the Navy.²

The public record of YN2 Kelley’s statements and conduct include the following:

- A. On April 11, 2020, YN2 Kelley posted a photograph of himself on Instagram wearing only a pair of tight-fitting shorts, through which an erection was clearly visible.³
- B. In January 2020, YN2 Kelley posted a description of himself giving oral sex to another man so vigorously that it allegedly resulted in a nosebleed.⁴
- C. On August 23, 2019, YN2 Kelley posted a photograph of himself in uniform, with a caption complaining that he hadn’t yet gotten his “daily dose of glitter and dick.”⁵

All of these actions bring discredit upon the United States Navy, and the military more broadly. Continuing to tolerate this behavior from YN2 Kelley creates the impression that the Navy believes that this behavior on social media is acceptable behavior for an NCO; one who is expected to set the example for Junior Sailors. These posts present a distorted view of the Navy to the public and bring discredit upon the armed forces. Under Article 134 of the Uniform Code of Military Justice, a Court-Martial is authorized to impose a “bad-conduct discharge; forfeiture of all pay and allowances, and confinement for 6 months” for such conduct.⁶

¹ Joshua Kelley (@HarpyDaniels), TWITTER, <https://bit.ly/3oFsaWn> (attached as Exhibit 1).

² See Yaron Steinbuch, *US Navy hires active-duty drag queen to be face of recruitment drive*, New York Post (May 3, 2023), <https://bit.ly/43QP0ZY>. Even if YN2 Kelley’s Twitter bio did have such a disclaimer, that would likely be insufficient, as most people who see his content on Twitter would see it in their feeds, without ever viewing his profile or his bio. The test is whether “an inference of official sponsorship by DoD or the Military Service . . . may be drawn.” Especially given YN2 Kelley’s appointment as a “Digital Ambassador” the inference of DoD sponsorship could still be drawn even with a disclaimer.

³ @Harpy_Daniels, INSTAGRAM (Apr. 11, 2020), <https://bit.ly/42h5VDZ> (attached as Exhibit 9).

⁴ @HarpyDaniels, TWITTER (Jan. 20, 2020, 11:55 PM), <https://bit.ly/3qqdcnW> (attached as Exhibit 11).

⁵ @HarpyDaniels, TWITTER (Aug. 23, 2019, 11:10 AM), <https://bit.ly/3oKhWOk> (attached as Exhibit 10).

⁶ Manual for Courts-Martial, United States (2019 ed.), pt. IV, ¶ 140.d.2.

II. Inappropriate Partisan Activity

The Department of Defense and the Department of the Navy prohibit service members from “solicit[ing] votes for or against a partisan political party, candidate, or cause.”⁷ This prohibition applies whether the member is in or out of uniform. See DoD Directive 1334.01.1.2(a)(2). In uniform, servicemembers may not participate in political activities when an inference of official sponsorship by DoD may be drawn. Servicemembers are also prohibited from engaging in “public speeches,” “interviews, picket lines, marches, rallies or any public demonstration which may imply sanction or endorsement by DoD” while wearing the uniform.⁸

Politically conservative servicemembers who have violated these rules have been discharged or court-martialed for their actions. For example, Sergeant Gary Stein, USMC, was discharged from service in 2012.⁹ Sergeant Stein had violated DoD Directive 1334.10 by forming a Facebook group entitled “Armed Forces Tea Party” and making statements critical of President Obama. Sergeant Stein received an Other than Honorable Discharge, stripping him of military benefits despite his eight years of service. Likewise, two Michigan National Guard soldiers on Federal duty status were recently disciplined for a September 2020 TikTok post where they made comments critical of “liberals and Democrats.”¹⁰

Disciplinary action against YN2 Kelley seems warranted as well. His Tweets are often highly partisan, including his public opposition to specific legislation supported by Florida Governor Ron DeSantis,¹¹ retweeting posts that call Donald Trump a “mutherfucker” and advocating for criminal charges against him,¹² and bragging about the “blue wave” in the 2018 midterms.¹³ YN2 Kelley also posted a Tweet that read, “if I was out of uniform I’d speak so much more of my political view [*sic*] **just know I mailed my vote and it was blue**,”¹⁴ advocating for the election of Democratic gubernatorial candidate Stacy Abrams in Georgia,¹⁵ reminding his followers that they “**need to vote in a democratic majority** in the midterms and the White House in 2020,”¹⁶ and even tweeting out Biden / Harris campaign materials.¹⁷

⁷ Dep’t of Def. Dir. 1334.01, Political Activities by Members of the Armed Forces, para. 4.1.2.3.

⁸ *Id.*

⁹ See e.g., *Stein v. Dowling*, 3:12-cv-00816, (S.D. Cal. Apr. 12, 2012) ECF No. 23.

¹⁰ Davis Winkie, *Deployed Soldiers Face Punishment for Their ‘Message to Liberals’ Video*, ARMYTIMES (Oct. 16, 2020), <https://bit.ly/43Fozqn>.

¹¹ @HarpyDaniels, TWITTER (Mar. 11, 2022, 9:43 AM), <https://bit.ly/3MGTDPD> (attached as Exhibit 2).

¹² @HarpyDaniels, TWITTER (Mar. 2, 2022, 10:58 PM), <https://bit.ly/3WGHZZH> (attached as Exhibit 3).

¹³ @HarpyDaniels, TWITTER (Nov. 9, 2018, 10:49 AM), <https://bit.ly/3C5gTSf> (attached as Exhibit 4).

¹⁴ @HarpyDaniels, TWITTER (Oct. 13, 2020, 10:21 PM), <https://bit.ly/43iKfIT> (emphasis added) (attached as Exhibit 5).

¹⁵ @HarpyDaniels, TWITTER (Oct. 29, 2018, 7:59 PM), <https://bit.ly/3oKjz4T> (attached as Exhibit 6).

¹⁶ @HarpyDaniels, TWITTER (Oct. 12, 2023, 6:43 AM), <https://bit.ly/3WIKESC> (emphasis added) (attached as Exhibit 7).

¹⁷ @HarpyDaniels, TWITTER (Sep. 30, 2020, 12:06 AM), <https://bit.ly/3N5KQqL> (attached as Exhibit 8).

YN2 Kelley's political partisanship has, on its face, far surpassed that of Sergeant Stein and the two National Guard Soldiers. If the Navy fails to treat YN2 Kelley the same way that it treated Sergeant Stein, then it will necessarily give credence and weight to the view that Sergeant Stein was not disciplined for engaging in partisan politics but for expressing the views of a political conservative; views with which the Navy apparently disagrees. Further, the Navy will create the appearance that it is sheltering YN2 Kelley not because his actions are appropriate, but rather because his partisan views are the official or unofficial views of the United States Navy itself.

III. Open Contempt for his Superiors

As a Petty Officer, YN2 Kelley is required to set an example for junior Sailors. Instead of setting an example of military discipline and martial virtue, he has repeatedly expressed contempt for the Navy and for his command. For example, on June 11, 2019, YN2 Kelley tweeted, "All of 7th fleet is lazy."¹⁸ Among others, this claim includes at least two Admirals (Vice Admiral Phillip Sawyer and Rear Admiral Ted LeClaire) and two Master Chief Petty Officers (Command Master Chief Benjamin Howat and Master Chief Jenkins).¹⁹ On April 24, 2020, he tweeted, "[President] Trump is trying to bring back the Tidepod Challenge..or [sic] empowering anal bleaching."²⁰ On another occasion, he accused then-President Trump of being a "white supremac[ist]" and asking his followers to "please vote. . . #Democrat"²¹ and to "Vote this piece of shit out."²² Comments far less extreme than these led to official action against Sergeant Stein.²³ Likewise, criticism of President Biden's Afghanistan withdrawal, without any partisan advocacy, caused Lt. Col. Stuart Scheller to be discharged.²⁴

¹⁸ @HarpyDaniels, TWITTER (Jun. 11, 2019, 5:55 AM), <https://bit.ly/3MKvjMO> (attached as Exhibit 12).

¹⁹ *Commander, U.S. 7th Fleet, Vice Admiral Phillip G. Sawyer*, <https://bit.ly/3oKouCT> (archived on Aug. 26, 2019); *Deputy Commander, U.S. 7th Fleet, Rear Admiral Theodore P.S. "Ted" LeClair*, <https://bit.ly/43BwSTV> (archived on Aug. 26, 2019); *U.S. 7th Fleet Command Master Chief Benjamin T. Howat*, <https://bit.ly/45EtmtU> (archived on Aug. 26, 2019); *Senior Enlisted Adviser [sic] to the U.S. 7th Fleet Staff Master Chief David Jenkins*, <https://bit.ly/43GPLFb>.

²⁰ @HarpyDaniels, TWITTER (Apr. 24, 2020, 9:17 AM), <https://bit.ly/3MOpZIf> (attached as Exhibit 13).

²¹ @HarpyDaniels, TWITTER (Sept. 29, 2020, 11:33 PM), <https://bit.ly/3WHRt6X> (attached as Exhibit 14).

²² @HarpyDaniels, TWITTER (Sept. 29, 2020, 10:12 PM), <https://bit.ly/3ozvHFX> (attached as Exhibit 15).

²³ See e.g., Michael S. James & Marisa Taylor, *Marine Sgt. Gary Stein Gets 'Other Than Honorable' Discharge Over Anti-Obama Facebook Comment*, ABC NEWS (Apr. 14, 2012), <https://abcn.ws/3N7SMJ6>.

²⁴ James R. Webb, *Marine Officer who Publicly Demanded Accountability Discharged*, MARINECORPSTIMES (Dec. 24, 2021), <https://bit.ly/3IPzXYF>.

IV. Misuse of the Uniform

Servicemembers may not wear the uniform “when [that] may tend to bring discredit upon the Military Services.”²⁵ Many of YN2 Kelley’s Instagram and Twitter consist of images or videos juxtaposing Kelley in his Navy uniforms with depictions of him in drag.²⁶ These videos associate the Navy with a controversial activity and lend the impression of official support. His Twitter bio and use of the nickname “Navy Drag Queen” further enhance the perception of official support.²⁷ YN2 Kelley’s videos discredit the Navy in the eyes of most Americans and embroil the Navy in political controversy; the very kinds of politically charged controversies DoD regulations are meant to prevent.

If YN2 Kelley were merely posting images of himself in drag without emphasizing his Navy affiliation, the question of sanctions might be a closer one. But contrary to controlling military requirements, he makes extensive use of his Navy affiliation to boost his public profile and facilitate his homosexual activism. There are many drag performers in the United States; few are as famous as “Harpy Daniels, the Navy Drag Queen.”

V. Conclusion

The Navy has long enforced high standards of personal conduct to ensure the maintenance of good order and discipline and taken strong measures to ensure that Sailors and Marines remain above partisan politics. YN2 Kelley’s conduct, as described herein, facially offends those high standards and casts the armed forces in disrepute.

The Navy cannot have one standard for political conservatives such as Sergeant Stein or nonpartisan individuals such as Lt. Col. Scheller, and another more generous standard for YN2 Kelley and others who share his views. Therefore, we respectfully write to request that you open an immediate investigation into YN2 Joshua Kelley’s conduct to prevent further damage to the Navy’s reputation and promptly restore good order and discipline within the ranks. Thank you in advance for your cooperation.

[Signature page follows]

²⁵ Dep’t of Def. Dir. 1334.01, Wearing of the Uniform, para. 1.2.a.4.

²⁶ See e.g. @HarpyDaniels, TWITTER (Apr. 20, 2020, 12:44 PM), <https://bit.ly/43lj7cu> (attached as Exhibit 16); @HarpyDaniels, TWITTER (Aug. 20, 2019, 6:34 AM), <https://bit.ly/3IStSKT> (attached as Exhibit 17); @HarpyDaniels, TWITTER (May 11, 2023, 8:16 PM), <https://bit.ly/3CbRFBG> (attached as Exhibit 18).

²⁷ See Joshua Kelley (@HarpyDaniels), TWITTER, <https://bit.ly/3oFsaWn> (attached as Exhibit 1). See e.g., @HarpyDaniels, TWITTER (Jun. 4, 2022, 8:43 AM), <https://bit.ly/3P8jeUz> (attached as Exhibit 19) @HarpyDaniels, TWITTER (Aug. 18, 2022, 5:08 PM), <https://bit.ly/3N9sR3U> (attached as Exhibit 20).

Sincerely,

/s/ Jacob Meckler

Jacob Meckler

America First Legal Foundation

Cc: The Hon. Rep. Mike Rogers, Chairman, House Armed Services Committee
The Hon. Rep. Adam Smith, Ranking Member, House Armed Services
Committee
The Hon. Sen. Jack Reed, Chairman, Senate Committee on the Armed Services
The Hon. Sen. Roger Wicker, Ranking Member, Senate Committee on the
Armed Services