



One Hundred Seventeenth Congress  
Committee on Homeland Security  
U.S. House of Representatives  
Washington, DC 20515

December 16, 2022

Admiral Linda L. Fagan  
Commandant  
United States Coast Guard  
2703 Martin Luther King Ave. SE, Stop 7501  
Washington, DC 20593-7103

Dear Admiral Fagan:

I write to express serious concern regarding the Coast Guard's response to allegations made by Mr. Ke'ha Maldonado during his time in basic training at Training Center (TRACEN) Cape May from September to November 2018. Several alarming violations of Coast Guard policies or the spirit of these policies occurred in the aftermath of his unrestricted report of sexual assault made on November 8, 2018. I urge you to review the findings and recommendations contained in this letter to bring about accountability for those involved in Mr. Maldonado's case, and to ensure that the Coast Guard's response does not fall short in a similar manner for other victims of sexual assault.

### **Background**

Mr. Maldonado was scheduled to be discharged from TRACEN Cape May on November 9, 2018, due to acculturation difficulties.<sup>1</sup> One day prior to his discharge, Mr. Maldonado made an unrestricted report of sexual assault via the Discharge Hold Element Sexual Assault Prevention Response and Recovery Equal Employment Opportunity (SAPRR-EEO) Harassment & Bullying Exit Survey. The Coast Guard discharged him within eight days of the report, and he departed TRACEN Cape May on November 16, 2018.

Multiple acknowledged and apparent failures by the Coast Guard to follow established policies occurred in the handling of Mr. Maldonado's case. These include:

1. **Failure to provide basic, requested SAPRR services to Mr. Maldonado as required by policy.** As a primary matter, Mr. Maldonado alleges that he requested a Victim Advocate (VA) to assist him in the aftermath of his report but was never assigned one. The Coast Guard conceded to the Committee that TRACEN Cape May's Executive Officer erroneously completed the box on Mr. Maldonado's CG-5370 Sexual Assault Incident Report form stating he was assigned a VA the day following

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<sup>1</sup> Coast Guard response to Representative Jared Huffman, June 5, 2020.

his assault, and that “a VA had not actually been assigned at the time the [Commanding Officer] submitted the report.”<sup>2</sup>

In internal Coast Guard correspondence provided to the Committee as well as external correspondence from the Coast Guard to various Members of Congress, the Service has provided contradictory accounts regarding whether a VA was ever assigned to Mr. Maldonado, first confirming he requested a VA, then later stating that he declined one. When questioned about these discrepancies, the Coast Guard asserted that Mr. Maldonado in fact elected to have the District 5 Sexual Assault Response Coordinator (SARC) serve as his VA. Mr. Maldonado denies that he chose or was otherwise made aware of the appointment of the SARC to be his VA, and the Coast Guard has been unable to produce documentation to support its assertion.

Also troubling is that the Service confirmed to the Committee “that Mr. Maldonado’s only meetings were with the Acting SARC on November 9, 2018 and with [the permanent SARC] on November 16, 2018,” and that “Mr. Maldonado did not receive any victim advocate services outside of those provided by the Acting SARC and [the permanent SARC].”<sup>3</sup> The Coast Guard alleges Mr. Maldonado requested that the SARC act as his VA during their only meeting on November 16, 2018, *the day of his discharge*.<sup>4</sup> This was also a *week* after the TRACEN Cape May Staff Judge Advocate noted in a November 9, 2018, email that the Acting SARC at the time had received a request from Mr. Maldonado for a VA and was working to fulfill that request. The Coast Guard’s timeline not only indicates that Mr. Maldonado was only allegedly assigned a VA *after* an investigation into his report was conducted, but that he largely went without contact with a VA or SARC during that entire period, including during an interview with the Coast Guard Investigative Service (CGIS) on November 13, 2018.

These missteps left Mr. Maldonado unaware of the status of his VA assignment and resulted in him receiving limited SAPRR services from the individuals who were purportedly filling this important role. The Coast Guard’s multiple contradictions regarding Mr. Maldonado’s request for a VA and the inaccurate certification by his command that he was assigned one indicate a lack of care for him as a victim, poor recordkeeping, and a failure to accurately determine what went wrong despite inquiries from multiple congressional offices. These contradictions also present the alarming possibility that a similar lack of care is being afforded to other recruits and service members reporting assault. Additionally troubling is that other victims may be receiving scarce victim support services in the aftermath of a report like Mr. Maldonado did, despite the Coast Guard’s widely touted commitment to caring for victims.

- 2. Failure to submit a Sexual Assault Incident Report form within 72 hours of a report as required by policy.** The Coast Guard admitted in a briefing to the Committee that the Service violated its own policy regarding the timely submission of

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<sup>2</sup> Coast Guard e-mail to Committee staff, March 1, 2022.

<sup>3</sup> Coast Guard e-mail to Committee staff, May 10, 2022.

<sup>4</sup> Coast Guard e-mail to Committee staff, May 10, 2022.

the CG-5370 Sexual Assault Incident Report form associated with Mr. Maldonado's sexual assault report. The CG-5370 states, "[The] victim's command shall complete the Sexual Assault Incident Report within 72 hours of the report.... This form shall be submitted via e-mail to the first O-6 in the victim's and/or subject's chain of command and also to the first flag officer in the victim's and/or subject's chain of command. In the event that notification cannot be completed within 72 hours, the submitting command shall send an email update stating the circumstances of delay."<sup>5</sup>

The CG-5370 form indicates that while Mr. Maldonado reported his assault on November 8, 2018, the form was not submitted by his command until November 14, 2018, according to the timestamp on the email from the Executive Officer to Force Readiness Command (FORCECOM). Submission of the form six days after the assault was reported is *beyond the 72 hour* requirement, in violation of policy. Coast Guard officials told the Committee that the form was indeed completed—though not submitted—in the appropriate window. This cannot be corroborated given that the timestamp in the signature block of the form was three minutes prior to its submission via e-mail, but regardless, the policy requires submission within 72 hours and an email notification if the timeframe cannot be met. The Coast Guard was unable to furnish any emails that would have explained the circumstances of the delay. When pressed on these problems, the Coast Guard confirmed that a violation of explicitly stated policy occurred in this case. The Coast Guard's apparent willingness to excuse certain violations of its own policies is disturbing.

The purpose of the CG-5370 is to closely document actions taken by those responsible for responding to a reported assault, and the 72-hour completion window is critical to ensuring these actions are taken promptly. In addition to the harm the delay caused Mr. Maldonado, the failure to file this form in a timely manner in this case raises questions regarding the experience of other recruits and service members who have reported an assault. Chronic failure to abide by the requirements outlined in the form could lead to deterioration of compliance with other important policies and create widespread failure in a system meant to quickly provide support to service members during a highly vulnerable period in their lives. The Coast Guard cannot allow officials to pick and choose which policies are important to follow to the letter—especially when it comes to policies designed to protect victims of assault.

- 3. Failure to furnish all relevant materials in response to the Committee's request for information.** When pressed on the timeline regarding the submission of the CG-5370 to report Mr. Maldonado's assault, the Coast Guard produced a November 14, 2018, email to FORCECOM with the form attached. This email was not provided as part of the Coast Guard's initial response to my June 16, 2021, request for all correspondence related to the case. The Coast Guard attributed the omission to a departed employee, even though the Service previously furnished other emails from that employee and the email in question was sent by an individual still in the Coast Guard. Mr. Maldonado's Special Victims' Counsel (SVC) Request form also was not initially provided to the Committee and had to be requested. Further, Mr. Maldonado's

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<sup>5</sup> "SEXUAL ASSAULT INCIDENT REPORT" (CG-5370), Coast Guard, February 2017.

Discharge Hold Element SAPRR-EEO-Harassment & Bullying Exit Survey, the form by which he reported his assault, was never provided to the Committee since, according to the Coast Guard, it had not been preserved.

While I can appreciate the large volume of correspondence and archived documentation the Coast Guard must sift through in producing a response to congressional inquiries, I am concerned that the Coast Guard may have withheld relevant materials regarding this case and that other documentation related to this request may still be outstanding. The missing materials further raise questions about the Coast Guard's internal record keeping and document production practices and whether key documentation related to investigations of wrongdoing and service members' experiences is properly maintained and produced. The failure to furnish requested materials impacts Congress' ability to conduct oversight of the Coast Guard and ensure the Service is upholding its commitments to victims of sexual assault.

4. **Tolerance of known bad behavior at TRACEN Cape May.** A February 2019 advice memo on Mr. Maldonado's case from the TRACEN Cape May Staff Judge Advocate to the Commanding Officer demonstrates a concerning appearance of tolerance for known misbehavior among recruits. As stated in the memo, "there...seemed to be a general awareness of the inappropriate behavior in the shower [where Mr. Maldonado was assaulted] by members in the regimental hold element." Despite this awareness, the Coast Guard seemingly allowed the behavior to perpetuate, calling into question whether the Training Center is a safe environment for recruits. Certainly, more could and should have been done to protect Mr. Maldonado.

Mr. Maldonado has expressed to the Committee that he has suffered severely in the aftermath of his reported assault due to the Coast Guard's actions. Unfortunately, his case and others like it reinforce the perception that the Coast Guard does not take sexual assault seriously or enforce meaningful accountability for those in the chain of command who are responsible for protecting service members. Furthermore, there continues to be a reluctance from the Coast Guard to express remorse to victims, even in cases with clear-cut violations of policy such as those seen in this case.

Therefore, I request that the Coast Guard respond by January 13, 2023, detailing what steps it will take to hold accountable those who were involved in the errors detailed above, and the changes to policy it will make to correct these documented failures.

### **Recommendations**

In addition, I recommend that the Coast Guard consider taking the following actions to further improve its response to incidents of sexual assault and harassment at TRACEN Cape May and throughout the Service. Please provide in writing a description of planned actions based on the recommendations outlined below.

1. **Create a policy specific to the discharge of a service member or recruit who makes a report of sexual harassment or assault while in the process of being separated.** Such a policy should prioritize the provision of appropriate medical care to the individual, which could include transferring the victim to another location to receive care, offering the victim

administrative leave to receive care outside the Coast Guard, and/or placing the discharge in abeyance while care is received and a thorough investigation is conducted. Once those steps are completed, the policy should require a documented consultation between the victim's Commanding Officer and the Crisis Intervention Team as to whether proceeding with the discharge is in the victim's best interest. Documentation of the consultation should then be preserved. The Coast Guard should also consider elevating the level at which final discharge decisions are made in cases involving an individual who has made a report of sexual harassment or assault.

2. **Preserve any forms or documents used to make a report.** When a recruit or service member makes a report via the Discharge Hold Element SAPRR-EEO-Harassment & Bullying Exit Survey or other form or document, the Coast Guard should preserve the documentation for sufficient time to ensure its availability for use in an investigation. In Mr. Maldonado's case, the Coast Guard provided multiple conflicting accounts of how Mr. Maldonado reported his assault while filling out the Survey and was unable to produce a copy of the document to clarify the conflicting stories due to the Survey's one year retention period. Preserving an individual's Survey or any other documentation related to the report of and response to an assault would help ensure documentation is readily available to aid an investigation.
3. **Ensure the delivery of SAPRR information to recruits at Cape May is clear, accessible, and digestible.** Information regarding sexual assault and harassment policies, the reporting process, and the rights of those making a report may not be clear to individuals new to the Service. The Coast Guard should evaluate whether recruits understand and sufficiently retain this critical information, and if not, what improvements can be made to the Coast Guard's delivery and reinforcement of this knowledge.

Furthermore, recruits who request or receive a discharge but have not yet completed basic training should be advised of the potential impact of their discharge on their ability to reenlist in the Coast Guard and to access care through the Department of Veterans Affairs based on their length of service. This is particularly important for victims of sexual assault, who may require long-term care that extends beyond their time in the Service.

4. **Make certain victims receive regular contact with SARCs and VAs to support their recovery and to comply with established Coast Guard practices.** Regardless of the amount of time that elapses between when a report is made and the member's discharge date, the member should promptly be assigned a VA if requested and have the opportunity to meet with them regularly. The Coast Guard's admission that Mr. Maldonado only had two interactions with the Acting SARC and permanent SARC is not only troubling from an access-to-support standpoint, it also indicates the Coast Guard contravened the policy outlined in the Sexual Assault Prevention and Response Tactics, Techniques, and Procedures (TTP) Manual that states, "Initially, [the] SARC/VA contacts the victim daily unless the victim requests less contact."<sup>6</sup> When questioned about the fact that Mr. Maldonado only had one meeting each with the acting and full-time SARCs, the Coast

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<sup>6</sup> "Sexual Assault Prevention and Response Tactics, Techniques, and Procedures (TTP) Manual" (CG TTP 1-16.1), Coast Guard, May 2016.

Guard told the Committee that this response step is only a best practice, rather than a requirement. However, the TTP Manual's purpose is "to identify, establish, and publish a clear and standardized set of procedures for [sexual assault prevention and response]" and nowhere does the manual indicate that its contents are solely recommendations.<sup>7</sup> The Coast Guard should require that the Manual be adhered to and avoid selectively deciding which policies and procedures should be followed.

5. **Identify gaps in reporting and follow-up procedures that could allow for errors and oversights to occur.** The procedures that were improperly followed in this case resulted in the late submission of the CG-5370, limited interaction between the victim and response personnel, and conflicting accounts of key aspects of the case. These failures suggest additional layers of accountability are needed to make certain other members do not experience similar shortfalls in the handling of their cases.
6. **Conduct a review of rates of sexual harassment and assault, overall climate, and perceptions of safety at TRACEN Cape May.** The Coast Guard should consider conducting a recurring, anonymous survey of recruits and training center personnel to capture the prevalence of unreported and reported sexual harassment and assault at the TRACEN Cape May. Such a survey should afford participants an opportunity to describe the climate of the training center and whether they feel safe from being sexually harassed or assaulted. In addition, Coast Guard civilian and uniformed personnel should have the option to provide feedback regarding whether better training is needed for medical staff and company commanders to identify markers of sexual harassment and assault, and whether the command climate is conducive to effectively preventing sexual harassment and assault. The Coast Guard should further solicit a neutral, third-party review of the climate and prevention and response procedures in place at the training center and any associated recommendations for improvement.
7. **Conduct a review of SAPRR personnel resources.** The Coast Guard should conduct a review of the number of SARCs, VAs, SVCs, and other personnel who provide SAPRR services to evaluate whether there are enough to meet the needs of service members. The review should examine whether the existing number and geographic distribution of SARCs, VAs, SVCs, and other such personnel are reflective of rates of reported sexual harassment and assault within the Coast Guard. As part of this assessment, the Coast Guard should also address any challenges it faces in recruiting individuals willing to serve in these roles. In addition, the size of each individual's area of responsibility should be examined to determine if it allows for timely responses when a sexual assault is reported. The SARC stationed at TRACEN Cape May can be called upon to provide SAPRR services to Coast Guard members in southern New Jersey, Delaware, and eastern Pennsylvania, in addition to those at the Training Center. The review should assess whether, given these large areas of responsibility, victims are receiving prompt, consistent SAPRR services.

I appreciate your consideration of the above recommendations. Since you took the helm as Commandant of the Coast Guard, I have been heartened by your assurances that you will bring a redoubled commitment to the safety and well-being of Coast Guard members at every level. It is

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<sup>7</sup> Ibid.

because of the Committee's strong support for the Coast Guard that I bring the concerns raised by this case to your attention as Commandant. The Committee will continue to assist you and the Coast Guard in its responsibility to be a safe, welcoming place for all who wish to serve this country.

Thank you for your attention to this matter.

Sincerely,

  
BENNIE G. THOMPSON  
Chairman

cc: The Honorable John Katko, Ranking Member, Committee on Homeland Security