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August 30, 2021

The Honorable Jack Reed
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Adam Smith
Chairman
The Honorable Mike Rogers
Ranking Member
Committee on Armed Services
House of Representatives

MILITARY JUSTICE: DOD and Coast Guard Improved Collection and Reporting of Demographic and Nonjudicial Punishment Data, but Need to Study Causes of Disparities

In May 2019, we issued a report on whether there are racial, ethnic, or gender disparities in the military justice system.¹ Among other things, we found that:

- The military services did not collect consistent information about race, ethnicity, and gender in their investigations, military justice, and personnel databases, which limited their ability to identify disparities.²
- Our analysis of available data found that Black, Hispanic, and male servicemembers were more likely than White or female servicemembers to be the subjects of investigations recorded in databases used by the military criminal investigative

¹GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, [GAO-19-344](#) (Washington, D.C.: May 30, 2019) (hereafter referred to as our “May 2019 report”). We issued this report in response to a provision in House Report 115-200, accompanying a bill for the National Defense Authorization Act for Fiscal Year 2018. The scope of our review included five military services: the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard. Although the Coast Guard is part of the Department of Homeland Security, it is a military service and a branch of the armed forces at all times. For the purposes of this report, the term “military services” refers to all five of these military services. The United States Space Force was not included in this review because it was not established as a military service within the Department of Defense (DOD) until December 20, 2019, in the National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92.

²For purposes of this report, we use the term “disparities” to describe instances in which a racial or gender group was overrepresented among the servicemembers who were investigated or disciplined for violations of the Uniform Code of Military Justice (UCMJ).

organizations, and to be tried in general and special courts-martial in all of the military services when controlling for attributes such as rank and education.³

- Race and gender were not statistically significant factors in the likelihood of a conviction in general and special courts-martial for most military services, and minority servicemembers were either less likely to receive a more severe punishment than White servicemembers or there was no difference among racial groups.
- The Department of Defense (DOD) had taken some steps to study disparities, but had not comprehensively evaluated the causes of racial or gender disparities in the military justice system.

We made 11 recommendations as a result of our findings, three of which were enacted into law in section 540I(b) of the National Defense Authorization Act (NDAA) for Fiscal Year 2020.⁴ Section 547 of the William M. (Mac) Thornberry NDAA for Fiscal Year 2021 included a provision for us to review the actions that DOD and the military services have taken to implement the statutory requirements from section 540I(b) of the NDAA for Fiscal Year 2020 and the recommendations from our May 2019 report.⁵ This correspondence summarizes the results of our assessment of the actions DOD and the military services have taken, or plan to take, to implement the recommendations from our May 2019 report and the requirements of section 540I(b) from the NDAA for Fiscal Year 2020, and whether any actions taken met the intended objectives.

To assess actions taken in response to recommendations from our May 2019 report and the requirements of section 540I(b) from the NDAA for Fiscal Year 2020, we reviewed documentation from the military services demonstrating their actions to implement our recommendations. Specifically, we reviewed military service guidance, user manuals, and other documentation related to the databases to determine the types of data officials are required to collect and maintain as well as internal procedures the military services follow to enter information about race, ethnicity, and gender into their investigations, military justice, and personnel databases. For example, we determined what categories were used to enter into and record race and ethnicity information in each database.

We also interviewed agency officials to help determine which field in each database tracks race, ethnicity, and gender; how these data are entered in the databases; and the actions their respective military service took to implement our recommendations. For actions taken in response to recommendations related to DOD studying the causes of disparities within the military justice system and whether these actions met their intended objectives, we reviewed issued reports or information about the scope and methodology of planned or ongoing reports from the military services on disparities within their respective military justice systems. We also

³Our findings of racial and gender disparities, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information and supporting statistics. To ensure that we had consistent profiles for the race, ethnicity, and gender of servicemembers for our analysis, we treated the personnel databases as the authoritative sources for servicemembers' demographic data. We then consolidated the various race and ethnicity values in the military service personnel databases to the five groups for race and the two groups for ethnicity established by the Office of Management and Budget standards for maintaining, collecting, and presenting data on race and ethnicity for federal reporting purposes. Office of Management and Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 Fed. Reg. 58,782 (Oct. 30, 1997). We grouped individuals of Hispanic ethnicity together, regardless of their racial identification, so that we could compare those of Hispanic ethnicity to other racial groups.

⁴Pub. L. No. 116-92, § 540I(b) (2019).

⁵Pub. L. No. 116-283, § 547 (2021).

interviewed DOD and military service officials to discuss any studies that were being planned or conducted to further assess disparities or causes of disparities in the military justice system.

We conducted this performance audit from February 2021 to August 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Overview of the Military Justice System

The Uniform Code of Military Justice (UCMJ) was established to provide the statutory framework of the military criminal justice system.⁶ The UCMJ contains articles that punish traditional crimes such as unlawful drug use and assault as well as unique military offenses including desertion, failure to obey orders or regulations, and misbehavior before the enemy, among others. In creating the military justice system, Congress established three types of military courts, called courts-martial: summary, special, and general. Each of these types respectively is intended to deal with progressively more serious offenses, and each court-martial type may adjudicate more severe maximum punishments as prescribed under the UCMJ.⁷ In addition, an accused servicemember can receive a nonjudicial punishment under Article 15 of the UCMJ, by which a commander can punish a servicemember without going through the court-martial process. Nonjudicial punishments are used to discipline minor offenses committed by enlisted servicemembers or officers.

Data Collection Standards and Definitions of Race, Ethnicity, and Gender

The Military Justice Act of 2016 directed the Secretary of Defense to prescribe uniform standards and criteria pertaining to case management, data collection, and accessibility of information in the military justice system.⁸ On December 17, 2018, the DOD General Counsel issued uniform standards and criteria, which directed that each military justice case processing and management system be capable of collecting uniform data concerning race and ethnicity (hereafter referred to as the 2018 uniform standards).⁹

These 2018 uniform standards for military justice databases specify that data concerning race and ethnicity should be collected according to the definitions established in the Office of Management and Budget (OMB) Statistical Policy Directive No. 15 (hereafter referred to as the OMB standards). The OMB standards establish the following five categories of race: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific

⁶10 U.S.C. §§801-946a.

⁷In addition to the maximum punishments that may be adjudicated by each type of court-martial, various relevant executive orders prescribe a maximum punishment for each offense.

⁸Pub. L. No. 114-328 §5504 (2016) (*codified at* 10 U.S.C. §940a). This section is also known as Article 140a of the UCMJ.

⁹General Counsel of the Department of Defense Memorandum, *Uniform Standards and Criteria Required by Article 140a Uniform Code of Military Justice* (Dec. 17, 2018) (hereafter referred to as the 2018 uniform standards).

Islander; and White.¹⁰ The OMB standards also establish two categories of ethnicity: Hispanic or Latino and not Hispanic or Latino.¹¹

DOD guidance provides that information collected on a servicemember's gender is based on reproductive function.¹² Specifically, this guidance provides that there are three options that can be selected when entering a servicemember's gender: male, female, or unknown. In addition, the 2018 uniform standards for military justice databases specify that gender data should be collected with options for male and female.¹³

Military Services Have Implemented Most of GAO's Recommendations, but DOD Needs to Take Further Action

The military services have implemented 8 of our 11 recommendations aimed at improving their ability to collect and report consistent demographic and nonjudicial punishment data, as shown in figure 1. However, DOD has not identified when disparities should be further reviewed or studied the causes of disparities in the military justice system.

¹⁰American Indian or Alaska Native is defined as a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment. Asian is defined as a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam. Black or African American is defined as a person having origins in any of the black racial groups in Africa. Native Hawaiian or Other Pacific Islander is defined as a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. White is defined as a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

¹¹Hispanic or Latino is defined as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. Not Hispanic or Latino is defined as a person not having the attributes defined in the Hispanic or Latino category.

¹²DOD Instruction 1336.05, *Automated Extract of Active Duty Military Personnel Records* (July 28, 2009) (incorporating Change 2, effective Mar. 31, 2015).

¹³In April 2021, DOD issued guidance that establishes procedures for changing a servicemember's gender within the Defense Enrollment Eligibility Reporting System database. DOD Instruction 1300.28, *In-Service Transition for Transgender Service Members* paragraphs 3.4 and 4.4.d (Apr. 30, 2021). The policy states that gender identity is a personal and private matter, and thus requires that the military services receive written approval from the Under Secretary of Defense for Personnel and Readiness to collect transgender and transgender related data or to release publicly such data.

Figure 1: Status of Department of Defense and Coast Guard Actions on GAO Recommendations to Address Racial and Gender Disparities, as of June 2021

Recommendation	Implementing agency	Implemented?
1 Coast Guard modify its military justice database to query and report on gender information	Coast Guard	✓
2 Army develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Army	✓
3 Air Force develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Air Force	✗
4 Navy develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Navy	✓
5 Coast Guard develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Coast Guard	✓
6 Secretary of Defense consider an amendment to annual military justice reporting requirements to require the military services to include demographic information	Department of Defense	✓
7 Secretary of Defense issue guidance that establishes criteria to specify when possible demographic disparities in the military justice process should be further reviewed, and that describes the steps to conduct such a review	Department of Defense	✗
8 Army consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases	Army	✓
9 Navy consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases	Navy	✓
10 Coast Guard consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases	Coast Guard	✓
11 Secretary of Defense conduct an evaluation to identify the causes of any disparities in the military justice system, and take steps to address them as appropriate	Department of Defense	✗

Source: GAO analysis. | GAO-21-105000

Note: For the report and its recommendations, see GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, [GAO-19-344](#) (Washington, D.C.: May 30, 2019).

Military Services Implemented Eight Recommendations to Improve Ability to Collect and Report Consistent Demographic and Nonjudicial Punishment Data in Military Justice System

All of the eight recommendations we have closed as implemented are about collection and reporting of consistent demographic and nonjudicial punishment data, as follows:

- Coast Guard has developed the capability to report gender information in its military justice database. (Recommendation 1)
- The Army, the Navy, and the Coast Guard have taken key steps to collect and maintain consistent data for race and ethnicity since our May 2019 report. (Recommendations 2, 4, and 5)
- The military services have begun reporting demographic data in annual reports that could provide greater visibility into potential racial, ethnic, or gender disparities. (Recommendation 6)
- The Army, the Navy, the Marine Corps, and the Coast Guard have started to collect complete nonjudicial punishment data. (Recommendations 8, 9, and 10)

For additional information about the recommendations that have been closed as implemented, see enclosure I. Agency actions taken thus far to address the three remaining recommendations that have not yet been implemented are described in greater detail below.

The Air Force Has Developed the Capability to Present Consistent Race and Ethnicity Data in Its Personnel Database but Not for Its Investigations Database

Status of May 2019 Recommendation to Air Force about Race and Ethnicity Data

The Secretary of the Air Force should develop the capability to present servicemembers' race and ethnicity data in its investigations and personnel databases using the same categories of race and ethnicity established in the December 2018 uniform standards for the military justice databases, either by (1) modifying the Air Force's investigations and personnel databases to collect and maintain the data in accordance with the uniform standards, (2) developing the capability to aggregate the data into the race and ethnicity categories included in the uniform standards, or (3) implementing another method identified by the Air Force. (Recommendation 3) (Not implemented)

Source: GAO. | GAO-21-105000

The Air Force has developed the capability to present race and ethnicity data in its personnel database consistent with the 2018 uniform standards, but has not yet done so for its investigations database, so this recommendation has not been fully implemented. The Air Force uses more values than those required by the 2018 uniform standards to collect and maintain race and ethnicity information in its personnel database, and has developed the capability to aggregate race and ethnicity information into the categories specified in the 2018 uniform standards. According to Air Force officials, the current Air Force investigations database cannot present data in accordance with the 2018 uniform standards. The Air Force is currently developing a new case management system that will replace its existing investigations database.¹⁴ Air Force officials told us that the Air Force is scheduled to replace this database either in fiscal year 2021 or fiscal year 2022. However, we were unable to

determine how the new investigations database will collect and maintain race and ethnicity information, as the system is still under development.

DOD Has Not Issued Guidance to Identify When Disparities Should Be Examined Further

Status of May 2019 Recommendation to DOD about Determining When to Further Review Disparities

The Secretary of Defense, in collaboration with the Secretaries of the military services and the Secretary of Homeland Security, should issue guidance that establishes criteria to specify when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed, and that describes the steps that should be taken to conduct such a review. (Recommendation 7) (Not implemented)

Source: GAO. | GAO-21-105000

DOD has not identified when any possible racial, ethnic, or gender disparities in the military justice system should be examined further, so this recommendation has not been implemented. In our May 2019 report, we found that DOD had not issued guidance that established criteria to specify when any data indicating possible demographic disparities in the military justice system should be further reviewed, and to describe what steps should be taken to conduct such a review. As a result, we recommended that DOD develop guidance on this matter. Following this, section 5401(b)(2) of the NDAA for Fiscal Year 2020 included a provision directing the Secretary of Defense to issue guidance in accordance with this recommendation.

As of June 2021, DOD has not issued guidance that would address this recommendation. Officials from DOD's Office for Diversity, Equity, and Inclusion (ODEI)

said that DOD had approved funding to have the Center for Naval Analyses, a nonprofit

¹⁴In addition, Air Force officials told us that the Air Force is also replacing its military justice database with the development phase of its new Disciplinary Case Management System, expected to be completed by the end of fiscal year 2021. An Air Force official said that over the long term, they plan for the new system to have on-demand access to data from the Air Force personnel database.

research and analysis organization, conduct a study to identify further disparities in the military justice system. ODEI officials said that they plan to use the findings and recommendations from this study to develop guidance that establishes criteria and steps that will be taken to conduct a review on disparities, as described in our recommendation. ODEI officials told us that the study should be completed around June 2022, but the exact timeframe for completion will depend on when the study formally begins.

DOD Is Beginning to Comprehensively Study the Extent and Causes of Disparities in the Military Justice System, but Has Not Identified Causes or Taken Steps to Address Disparities

Status of May 2019 Recommendation to DOD about Studying Causes of Disparities

The Secretary of Defense, in collaboration with the Secretaries of the military services and the Secretary of Homeland Security, should conduct an evaluation to identify the causes of any disparities in the military justice system, and take steps to address the causes of these disparities as appropriate. (Recommendation 11) (Not implemented)

Source: GAO. | GAO-21-105000

DOD and the military services have some assessments of military justice system disparities completed or underway, in which they are beginning to comprehensively study the extent and causes of any disparities. However, DOD has not identified causes or taken steps to address disparities, so our recommendation has not been implemented.

In our May 2019 report, we recommended that the Secretary of Defense conduct an evaluation to identify the causes of any disparities in the military justice system, and take steps to address the causes of these disparities. DOD partially concurred with this recommendation, agreeing with the content, but requesting that we modify the recommendation to direct it to more appropriate entities. We made that change before the report was issued. In December 2019, the NDAA for Fiscal Year 2020 included a provision directing

the Secretary of Defense to conduct an evaluation consistent with our recommendation.¹⁵ DOD was directed to commence or carry out these activities by June 2020.

In October 2019, prior to the enactment of the NDAA for Fiscal Year 2020, DOD officials told us that the department was exploring the feasibility of conducting an internal research project to delve into the differences in military justice data to inform the implementation of this recommendation. At that time, they estimated that this research might be concluded in March 2021. ODEI subsequently developed a research proposal for a study to be conducted by a nonprofit research and analysis organization, which ODEI officials said would provide a more independent assessment than a study conducted using internal DOD capabilities. According to ODEI officials, as of May 13, 2021, the department had approved funding for the ODEI research proposal. ODEI officials said that they plan to use the findings and recommendations from this study to identify the causes and steps to take to address those causes as noted in our recommendation. As of June 2021, ODEI officials stated that the study should be completed around June 2022, but the exact timeframe for completion will depend on when the study formally begins.

In addition to the ODEI study, four of the military services are also conducting studies about disparities. Each of these studies are discussed in more detail in enclosure II. We believe that conducting comprehensive analyses into the causes of disparities in the military justice system would better position DOD and the military services to identify actions to address disparities,

¹⁵Pub. L. No. 116-92, §540l(b)(3).

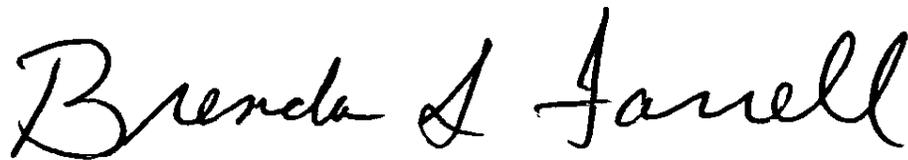
and thus help ensure that the military justice system is fair and just, a key principle of the UCMJ. While the military service studies will provide helpful insights, we continue to believe that it is important for DOD to initiate and complete the department-wide study that we recommended, so that they can identify any department-wide concerns and take appropriate corrective actions.

Agency Comments

We provided a draft of this report to DOD and the Department of Homeland Security for review and comment. DOD and the Department of Homeland Security provided technical comments, which we have incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Secretary of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3604 or farrellb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in enclosure III.

A handwritten signature in black ink that reads "Brenda S. Farrell". The signature is written in a cursive, flowing style.

Brenda S. Farrell
Director, Defense Capabilities and Management

Enclosures—3

Enclosure I: Recommendations from GAO-19-344 That Have Been Implemented

DOD has implemented eight recommendations from our May 2019 report, so we have closed those recommendations as implemented. Agency actions taken to address these eight implemented recommendations are described below.

Coast Guard Has Developed the Capability to Report Gender Information in Its Military Justice Database

Status of May 2019 Recommendation to Coast Guard about Gender Information

The Secretary of Homeland Security should ensure that the Commandant of the Coast Guard modifies the Coast Guard's military justice database so that it can query and report on gender information. (Recommendation 1) (Implemented)

Source: GAO. | GAO-21-105000

In our May 2019 report, we found that the Coast Guard was unable to determine the gender of servicemembers prosecuted for UCMJ violations without merging data from multiple databases, which can be labor intensive and time consuming. As a result, we recommended that the Coast Guard modify its military justice database to be able to report and query gender information. As of October 2019, the Coast Guard implemented modifications to its military justice database so that it now supports queries and reporting for gender information. Specifically, the Coast Guard has now made gender a required field in its military justice database, and gender now appears as a field on the database's search screen. We closed this

recommendation as implemented in 2020, as we believe that the actions taken by the Coast Guard meet the intent of our recommendation.

Army, Navy, Marine Corps, and Coast Guard Developed Capabilities to Present Race and Ethnicity Data in Accordance with 2018 Uniform Standards

As of June 2021, the Army, the Navy, the Marine Corps, and the Coast Guard have developed the capability to present race and ethnicity data consistent with the 2018 uniform standards in their respective personnel and investigations databases, while the Air Force is still working to develop these capabilities. As a result, recommendations 2, 4, and 5 have been implemented. As discussed above, recommendation 3 has not been implemented, and will not be discussed again below.

In our May 2019 report, we found, among other things, that the military services were not collecting and maintaining consistent information regarding race and ethnicity in their investigations, military justice, and personnel databases. In December 2018, the DOD General Counsel issued uniform standards and criteria required by article 140a of the UCMJ. The 2018 uniform standards directed the military services to collect data related to race and ethnicity in their military justice databases, and use specific categories to collect racial and ethnic data in separate data fields. The military services were to implement the 2018 uniform standards in their military justice databases no later than December 23, 2020. However, the 2018 uniform standards only applied to the military services' military justice databases and not to their personnel and investigations databases. As a result of these findings, we made four recommendations that the Army, the Air Force, the Navy, and the Coast Guard, respectively, develop the capability to present servicemembers' race and ethnicity data in their investigations and personnel databases using the same categories of race and ethnicity established by the 2018 uniform standards. DOD and the Department of Homeland Security concurred with these recommendations, and as of June 2021, have implemented three of the four recommendations.

Since our May 2019 report, the military services have taken key steps to collect and maintain consistent data for race and ethnicity information. Table 1 summarizes whether the databases used by the military services collect servicemembers' race and ethnicity data in accordance with the 2018 uniform standards, and which method they use to collect the data as of June 2021. The first method defined in the standards for collecting race and ethnicity data is the "Two Question Format," in which race is reported using five categories, and ethnicity is reported using two categories.¹⁶ The second is the "Combined Format," in which race and ethnicity are reported together using six categories.¹⁷

Table 1: Race and Ethnicity Data Collection in Military Services' Investigations and Personnel Databases as of June 2021

Service	Database name	Ability to present in accordance with the 2018 uniform standards for military justice databases		
		Reporting method	Race	Ethnicity
Army	Army Law Enforcement Reporting and Tracking System (I)	Two Question	Yes	Yes
	Total Army Personnel Database (P)	Two Question	Yes	Yes
Navy and Marine Corps Shared	Consolidated Law Enforcement Operations Center (I)	Two Question	Yes	Yes
Navy	Navy Personnel Database (P)	Two Question	Yes	Yes
Marine Corps	Marine Corps Total Force System (P)	Two Question	Yes	Yes
Air Force	Investigative Information Management System (I)	Two Question	No	No
	Military Personnel Data System (P)	Two Question	Yes	Yes
Coast Guard	Field Activity Case Tracking System (I)	Two Question	Yes	Yes
	Direct Access (P)	Combined	Yes	Yes

Legend: (I)=investigations database; (P)=personnel database

Source: GAO analysis of each military service's investigations and personnel database information. | GAO-21-105000

¹⁶The five race categories in the "Two Question Format" are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. The two ethnicity categories in this method are: Hispanic or Latino, and not Hispanic or Latino.

¹⁷The six race and ethnicity categories in the "Combined Format" are: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, and White.

Army Can Present Consistent Race and Ethnicity Data in Its Investigations and Personnel Databases

Status of May 2019 Recommendation to Army about Race and Ethnicity Information

The Secretary of the Army should develop the capability to present servicemembers' race and ethnicity data in its investigations and personnel databases using the same categories of race and ethnicity established in the December 2018 uniform standards for the military justice databases, either by (1) modifying the Army's investigations and personnel databases to collect and maintain the data in accordance with the uniform standards, (2) developing the capability to aggregate the data into the race and ethnicity categories included in the uniform standards, or (3) implementing another method identified by the Army. (Recommendation 2) (Implemented)

Source: GAO. | GAO-21-105000

The Army has developed the capability to present race and ethnicity data in its investigations and personnel databases consistent with the 2018 uniform standards. In July 2019, the Army updated the race and ethnicity categories in its investigations database to be consistent with those in the 2018 uniform standards. In its personnel database, the Army uses different values than those required by the 2018 uniform standards to collect and maintain race and ethnicity information, but has developed a process to use its detailed ethnicity data to separate certain combined race categories and present the race data in accordance with the 2018 uniform standards. The Army also has provided documentation that it has the capability to collect 23 types of ethnicity, and is able to aggregate those ethnicities into the Hispanic and non-Hispanic categories established in the 2018 uniform standards. Army officials stated that, although they have a method for aggregating their ethnicity data into the categories defined in the standards, the aggregation is conducted manually. Although this manual process could be time-consuming and labor-intensive, this method does provide the capability to aggregate in a method

consistent with our recommendation. As a result, we believe that the actions taken by the Army meet the intent of our recommendation, and we have closed the recommendation as implemented.

Navy and Marine Corps Can Present Consistent Race and Ethnicity Data in Personnel and Investigations Databases

Status of May 2019 Recommendation to Navy about Race and Ethnicity Information

The Secretary of the Navy should develop the capability to present servicemembers' race and ethnicity data in its investigations and personnel databases using the same categories of race and ethnicity established in the December 2018 uniform standards for the military justice databases, either by (1) modifying the Navy's investigations and personnel databases to collect and maintain the data in accordance with the uniform standards, (2) developing the capability to aggregate the data into the race and ethnicity categories included in the uniform standards, or (3) implementing another method identified by the Navy. (Recommendation 4) (Implemented)

Source: GAO. | GAO-21-105000

Both the Navy and the Marine Corps have developed the capability to present consistent race and ethnicity data in their respective personnel databases, and the Navy has developed this capability in its investigations database, which also serves as the investigations database for the Marine Corps. Navy officials stated that the Navy updated its personnel database in August 2020 to collect and present race and ethnicity data in accordance with the 2018 uniform standards. The Navy has provided documentation that it has the capability to collect data on 23 categories of ethnicity, and is able to aggregate those ethnicities into the Hispanic and non-Hispanic categories established in the 2018 uniform standards. The Marine Corps personnel database has the capability to present race and ethnicity data in accordance with the categories of race and ethnicity defined in the uniform standards. Similar to the Navy, the Marine Corps has the capability to collect more than 20 different ethnicity categories, and has the capability to aggregate ethnicity into the Hispanic and non-Hispanic categories specified in the 2018 uniform standards. In June 2021, the Navy completed updates to its investigations database, which collects

investigations data for both Navy and Marine Corps cases. The Navy can now collect race and ethnicity data in categories consistent with the 2018 uniform standards as a result of a policy update.¹⁸ By implementing our recommendation, we believe the Navy will be better positioned to analyze consistent demographic data. We believe that the actions taken by the Navy meet the intent of our recommendation, and we have closed the recommendation as implemented.

¹⁸Naval Criminal Investigative Service Policy Document 21-2, *Updated Values for Sex, Race, and Ethnicity* (June 7, 2021).

Coast Guard Can Present Consistent Race and Ethnicity Data in Its Investigations and Personnel Databases

Status of May 2019 Recommendation to Coast Guard about Race and Ethnicity Information

The Secretary of Homeland Security should ensure that the Commandant of the Coast Guard develops the capability to present servicemembers' race and ethnicity data in its investigations and personnel databases using the same categories of race and ethnicity established in the December 2018 uniform standards for the military justice databases, either by (1) modifying the Coast Guard's investigations and personnel databases to collect and maintain the data in accordance with the uniform standards, (2) developing the capability to aggregate the data into the race and ethnicity categories included in the uniform standards, or (3) implementing another method identified by the Coast Guard. (Recommendation 5) (Implemented)

Source: GAO. | GAO-21-105000

The Coast Guard has the capability to collect and present race and ethnicity data in its investigations and personnel databases consistent with the 2018 uniform standards. Specifically, race and ethnicity are collected in separate fields in the Coast Guard's investigations database, and the categories currently used for both fields are consistent with the standards. Coast Guard officials told us that the Coast Guard updated its investigations database to use categories consistent with those required by the 2018 uniform standards. In its personnel database, the Coast Guard collects race and ethnicity data using the combined categories of race and ethnicity permitted by the 2018 uniform standards, and the combined race and ethnicity categories currently used in the Coast Guard's personnel database are consistent with the 2018 uniform standards. Coast Guard servicemembers have the option to update their race and ethnicity within their respective personnel profiles using a self-service feature. Coast Guard officials said that they adjusted the options within that feature to ensure the data collected is consistent with the standards. By implementing our recommendation, the Coast Guard is better positioned to analyze consistent demographic

data. We believe that the actions taken by the Coast Guard meet the intent of our recommendation, and we have closed the recommendation as implemented.

The Military Services Have Begun Reporting Data That Could Provide Greater Visibility into Disparities

The military services have begun reporting demographic data in annual reports that could provide greater visibility into racial, ethnic, or gender disparities in the military justice system. The UCMJ directs each of the military services to submit annual reports on the military justice system to the Congressional Armed Services Committees. In our May 2019 report, we found that these annual reports did not include demographic information about servicemembers who experienced a military justice action. As a result, we recommended that DOD consider an amendment to the UCMJ reporting requirement that would require the military services to include data about race, ethnicity, and gender in the annual reports about military justice actions.

Status of May 2019 Recommendation to DOD about Reporting Demographic Information

The Secretary of Defense should ensure that the Joint Service Committee on Military Justice, in its annual review of the UCMJ, considers an amendment to the UCMJ's annual military justice reporting requirements to require the military services to include demographic information, including race, ethnicity, and gender, for all types of courts-martial. (Recommendation 6) (Implemented)

Source: GAO. | GAO-21-105000

In September 2019, DOD's Joint Service Committee on Military Justice proposed an action item on this recommendation as part of its annual review. Specifically, the committee was considering an amendment to the UCMJ's annual military justice reporting requirements to require the military services to include demographic information, including race, ethnicity, and gender, for all types of courts-martial. Following this, section 540I(b)(1) of the NDAA for Fiscal Year 2020 included a provision directing the Secretary of Defense to include this demographic information for both victims and the accused in the annual military justice reports.¹⁹ The DOD General Counsel issued a memorandum on June 8, 2020, instructing the military services to record race, ethnicity, and gender data of both the victim and accused parties to all courts-martial convened on or after June 17, 2020.²⁰

In the fiscal year 2020 annual military justice reports to Congress, all of the military services reported race, ethnicity, and gender information for both victims and accused parties in accordance with the memo and the statutory requirements. Specifically, in their respective 2020 annual reports, the Navy, the Marine Corps, the Air Force, and the Coast Guard all reported race and ethnicity as separate fields, with five distinct race categories and two ethnicity categories. The Army reported race and ethnicity as one combined field, with six categories. Although these differences could pose a challenge for future cross-service analyses on disparities, both reporting options are allowed under the OMB standards. As a result, we believe that the actions taken by DOD and the military services meet the intent of our recommendation, and we have closed the recommendation as implemented.

Army, Navy, Marine Corps, and Coast Guard Have Begun Collecting Complete Nonjudicial Punishment Data

The Army, the Navy, the Marine Corps, and the Coast Guard have begun collecting complete nonjudicial punishment data. As a result, we have closed three recommendations as implemented, one for each of these military services. In our May 2019 report, we found that there was inconsistent collection of data related to nonjudicial punishments across the military services.²¹ Specifically, we could not determine whether disparities existed among servicemembers subject to nonjudicial punishments in the Army, the Navy, and the Coast Guard because they did not collect complete nonjudicial punishment data in their investigations, military justice, or personnel databases. Army and Navy officials told us that they did not record nonjudicial punishment information in part because nonjudicial punishments are not meant to follow servicemembers throughout their careers, while Coast Guard officials stated concerns that recording nonjudicial punishment data might inhibit the rehabilitative component of nonjudicial punishments. The military justice databases for these three military services did contain records of nonjudicial punishments in which there was legal involvement by the Judge

¹⁹Pub. L. No. 116-92, §540I(b)(1) (2019).

²⁰General Counsel of the Department of Defense Memorandum, *Recording Court-Martial Demographic Information* (June 8, 2020).

²¹Commanding officers decide nonjudicial punishments, and use them to discipline minor offenses committed by enlisted servicemembers or officers.

Advocate General's Corps in the case. At the time of our May 2019 report, Army, Navy, and Coast Guard officials all expressed concerns about the feasibility of collecting and maintaining data on all nonjudicial punishments.

As a result, we made three separate recommendations to the Army, the Navy, and the Department of Homeland Security for the Coast Guard to consider the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the military service's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. The Army, the Navy, and the Department of Homeland Security concurred with these recommendations. We believe that the actions taken meet the intent of our recommendations, and we have closed the recommendations as implemented.

Army Collects Nonjudicial Punishment Data on All Cases

Status of May 2019 Recommendation about Army Nonjudicial Punishment Data

The Secretary of the Army should consider the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the Army's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. (Recommendation 8) (Implemented)

Source: GAO. | GAO-21-105000

The Army maintains gender, race, ethnicity, offense, and punishment data for nonjudicial punishments in its military justice database; however, at the time of our May 2019 report, only 65 percent of their reported nonjudicial punishment cases were maintained in their military justice database. In December 2017, the Army Deputy Judge Advocate General issued guidance identifying the Army's military justice database as the single tool for creating, processing, and managing nonjudicial punishments, among other things.²² In 2020, the Army updated its guidance on collecting nonjudicial punishment data, to require that all nonjudicial punishments will be recorded on a form that is to be transmitted by the servicing legal office through the Army's military justice database.²³ According to Army officials, after publication of this guidance, they expect that the Army's military justice database is now

collecting 100 percent of these actions, in part because they require the use of new forms that can only be generated in the database. By implementing our recommendation, the Army will improve its ability to assess or identify disparities among populations subject to this type of punishment. We believe that the actions taken by the Army meet the intent of our recommendation, and we have closed the recommendation as implemented.

²²Department of the Army, Deputy Judge Advocate General Memorandum, *The Judge Advocate General's Corps Enterprise Applications—DJAG Policy Memorandum 18-02* (Dec. 19, 2017).

²³Army Regulation 27-10, *Military Justice* (Nov. 20, 2020).

Navy and Marine Corps Collect Nonjudicial Punishment Data on All Cases

Status of May 2019 Recommendation about Navy and Marine Corps Nonjudicial Punishment Data

The Secretary of the Navy should consider the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the Navy's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. (Recommendation 9) (Implemented)

Source: GAO. | GAO-21-105000

The Navy and the Marine Corps have begun collecting data on all nonjudicial punishment cases.²⁴ Specifically, in October 2020, the Navy Judge Advocate General issued guidance, which provided that all Navy and Marine Corps officers performing military justice functions must report on a quarterly basis the results of all summary courts-martial and nonjudicial punishments completed by their command.²⁵ The Navy and Marine Corps collect nonjudicial punishment data including offender and victim race, ethnicity, and gender data, as well as offense and punishment imposed using an Excel form that was included in the guidance. Navy officials stated that collecting this information through Excel was an interim solution. For a permanent solution, the officials said that they expect to collect this information through their personnel database by October 31, 2022. Marine Corps officials stated that

they expect to collect this information through their personnel database by October 31, 2021. By implementing our recommendation, the Navy and the Marine Corps will improve their ability to assess or identify disparities among populations subject to this type of punishment. We believe that the actions taken by the Navy and the Marine Corps meet the intent of our recommendation, and we have closed the recommendation as implemented.

Coast Guard Collects Nonjudicial Punishment Data for Most Cases

Status of May 2019 Recommendation about Coast Guard Nonjudicial Punishment Data

The Secretary of Homeland Security should ensure that the Commandant of the Coast Guard considers the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the Coast Guard's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. (Recommendation 10) (Implemented)

Source: GAO. | GAO-21-105000

The Coast Guard has now begun collecting more complete data on nonjudicial punishment cases. Specifically, in January 2021, the Coast Guard issued guidance which stated that nonjudicial punishment results should be entered into the Coast Guard's personnel database, except when the charges are dismissed or dismissed with a warning. As a result, the Coast Guard currently collects nonjudicial punishment data including offender race, ethnicity, and gender data, as well as punishment imposed. By implementing our recommendation, the Coast Guard will improve its ability to assess or identify disparities among populations subject to this type of punishment. We believe that the actions taken by the Coast Guard meet the intent of our recommendation, and we have closed the recommendation as implemented.

²⁴At the time of our May 2019 report, Marine Corps officials said that commanders fill out a form for all executed administrative actions, nonjudicial punishments, and all types of courts-martial, and information from those forms were then recorded in the personnel database.

²⁵Department of the Navy JAG Instruction 5800.9E, *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)* (Oct. 19, 2020).

Enclosure II: Military Service Studies about Racial and Gender Disparities in the Military Justice System

Some of the military services are conducting studies about disparities in the military justice system, as shown in table 2.

Table 2: Overview of Military Service Studies about Racial and Gender Disparities in the Military Justice System

Organization and study name/title	Topic/scope	Complete	Completion date	Disparities found	Confirms GAO findings
<i>Army</i>					
Holistic Evaluation and Assessment of Racial Disparity (HEARD)	Collection of racial and ethnicity data on 15 points along the military justice timeline, including: accessions waivers, drug testing, family advocacy reporting, sexual assault reporting, law enforcement investigations, administrative separations, nonjudicial punishment, courts-martial, defense appellate issue identification, appellate court relief, professional responsibility complaints, Army Corrections Command data, and Army Clemency and Parole Board data. HEARD also includes a qualitative study.	No	October 2021 (estimated)	N/A	N/A
Office of Economic and Manpower Analysis (OEMA) Review of GAO-19-344 Report	Replicated GAO's 2019 Army-related findings and controlled for additional demographic variables to further investigate specific key findings	Yes	December 5, 2020 ^a	Yes	Partial ^b
OEMA Examination of Racial Disparities in Army Urinalysis Drug Testing	Investigated the prevalence of random drug testing and drug testing suspicion among Black, Hispanic, and White servicemembers using drug test and personnel data between 2018 and 2019	Yes	December 1, 2020 ^a	Yes	N/A ^c
OEMA Extension of Holistic Evaluation and Assessment of Racial Disparity Data Collection and Analysis	Extension of the initial data collection that controls for age, rank, education, gender, years of service, Armed Forces Qualification Test score, military occupational specialty, and installation	No	February 10, 2021 ^a	N/A	N/A
<i>Navy and Marine Corps</i>					
Gender Differences in and Costs of Misbehavior among [Department] of Navy Enlisted Personnel ^d	Investigated gender disparities in misbehavior rates among enlisted Marines and Sailors from fiscal year 1999 to fiscal year 2015	Yes	April 2019	Yes	Yes

Organization and study name/title	Topic/scope	Complete	Completion date	Disparities found	Confirms GAO findings
Race Differences in Misbehavior among Navy Enlisted Personnel ^d	Investigated racial disparities in misbehavior rates among enlisted sailors from fiscal year 1999 to fiscal year 2019	Yes	June 25, 2020	Yes	Yes
Understanding Sexual Assault in the Marine Corps	Examines how health, sociodemographic (e.g., race), behavioral, or career factors explain the risk of being a subject ^e or victim of sexual assault. The study will also examine how disciplinary actions affect the careers of subjects ^e and victims, and if disciplinary actions vary by race, gender, rank, and sexual assault accusation or conviction	No	2024 (estimated)	N/A	N/A
Examining Diversity and Inclusion in the Marine Corps	Will examine racial, ethnic, and/or gender disparities across career trajectories, including milestones (such as board selection), separation, as well as criminal incidences (e.g., sexual assault)	No	Ongoing	N/A	N/A
<i>Air Force</i>					
Independent Racial Disparity Review	Racial disparity in military discipline processes and personnel development and career opportunity as they pertain to black airmen and space professionals	Yes	December 2020	Yes	Yes
Follow-on Study to Independent Racial Disparity Review ^f	Expands scope of the first study to look at disparities for non-Black minority servicemembers across genders in three race categories (Asian, American Indian or Alaskan Native, and Native Hawaiian or Pacific Islander) and one ethnicity category (Hispanic/Latinx)	No	Summer 2021 (estimated)	N/A	N/A
Military Discipline Disparity Study ^g	Identify potential causes of military justice disparities	No	Late fiscal year 2021 (estimated)	N/A	N/A

Legend: N/A=Not applicable

Source: GAO analysis of military service documents and information from military service officials. | GAO-21-105000

^aWhile this study has been completed, it has not yet been published. Army officials told us that the Army will publish this report as part of a larger initiative.

^bThe study was consistent with GAO analyses with respect to associations between race and trials in general and special courts-martial, convictions, and punishment severity in its replication of our study. There were discrepancies in the number of servicemembers and courts-martial with and without investigations. However, associations in our study and their analyses for these courts-martial remained statistically significant. After correspondence with Army officials, discrepancies in the number of servicemembers can be attributed to: (1) our use of monthly snapshots, which included any servicemember who served in the Army at any point throughout the year, compared to Army's use of end-of-fiscal-year annual panels that only included servicemembers who served in the Army at the end of the fiscal year; (2) lag time between investigations and court-martial cases, which contributes to the higher number of court-

martial cases with investigations in the Army's data pull in 2020 compared to our data pull from 2018. OEMA also uses both the GAO investigation window (2013-2017) and a larger window (2001-2017) to estimate its results. In addition, discrepancies in the association between race and general and special court-martial trials, with and without investigations, arose because the Army analysis was not comparable to ours; specifically, the control variables and reference groups were different between our respective analyses.

^cThis study confirmed the presence of disparities that were not within the scope of our May 2019 report.

^dConducted by the Center for Naval Analyses on behalf of the Department of the Navy.

^eAccording to a Marine Corps official, Marine subjects of sexual assault refers to any person under investigation for sexual assault or any person convicted (perpetrator) of sexual assault.

^fConducted by the Inspector General for the Department of the Air Force at the direction of the Secretary of the Air Force, the Chief of Staff of the Air Force, and the Chief of Space Operations.

^gConducted by The RAND Corporation on behalf of the Department of the Air Force.

Overview of Army Studies

Army officials told us that, in response to our May 2019 report, the Secretary of the Army directed a holistic assessment of the Army's investigation and disciplinary systems that would evaluate and assess the sources of any racial disparities, and make specific recommendations for improvements to these systems. Army officials said that this assessment is included as a separate line of effort within a larger Army effort to study racial disparities called "Project Inclusion".²⁶ The officials said that the working group, composed of multiple stakeholders, collected race and ethnicity data from fiscal years 2017 to 2019 from 15 points along a broadly defined military justice timeline.²⁷ The officials explained that the intent of the initial data collection was to examine, through regression analysis, the data we analyzed in our May 2019 report to identify where racial disparities existed, where racial disparities were exacerbated, and where racial disparities were alleviated.

According to Army officials, after submitting an interim progress report in November 2020 and briefing Army senior leaders in December 2020, the Director of Army Staff directed The Judge Advocate General and the Provost Marshal General to work with the Office of Economic and Manpower Analysis (OEMA) to conduct additional multivariate analysis to further study causation of the identified disparities and completion of the ongoing qualitative study. As a result, Army officials said that The Judge Advocate General of the Army and OEMA jointly developed three research lines of effort to support the larger HEARD research initiative.

The first study, completed in December 2020, sought to replicate our review, while also controlling for additional variables and using more data than those we examined to further investigate our findings.²⁸ The study was able to replicate and confirm our key Army-related findings with respect to associations between race and trials in general and special courts-

²⁶The assessment is called "Holistic Evaluation and Assessment of Racial Disparity" (HEARD). Army officials told us that HEARD also initiated a qualitative study by the Behavioral Science Education and Training Department at the United States Military Police School consisting of phenomenological analyses of 130 semi-structured interviews conducted with military justice and non-military justice personnel and 24 sensing sessions across the Army specifically discussing racial disparities in military justice.

²⁷According to Army officials, these 15 points along the military justice timeline include: accessions waivers, crime trends, military justice actors, drug testing, family advocacy reporting, sexual assault reporting, law enforcement investigations, administrative separations, nonjudicial punishment, courts-martial, defense appellate issue identification, court-martial appellate court outcomes, professional responsibility complaints, Army Corrections Command data, and Army Clemency and Parole Board data. The officials told us that HEARD also includes a qualitative study.

²⁸R. Patterson and K. Greenberg, "OEMA Review of the GAO-19-344 Report to the Committee on Armed Service, House of Representatives 'Military Justice DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities'" (OEMA, Dec. 5, 2020, forthcoming).

martial, convictions, and punishment severity. In addition, the Army found racial disparities persist when controlling for additional demographic measures, such as servicemembers' Armed Forces Qualification Test, home state of record, and military occupational specialty.

However, there were discrepancies between our findings and theirs in the number of servicemembers and courts-martial with and without investigations. Specifically, our analyses and the Army's study both found statistically significant disparities for Black servicemembers in general and special courts-martial that were and were not preceded by a recorded investigation. However, our analyses found that this association differed by the presence or absence of an investigation, while the Army's associations were consistent regardless of investigation. After controlling for other attributes, the Army's study found that Black servicemembers were 2.19 times more likely than White servicemembers to be tried in general and special courts-martial following a recorded investigation, compared to our analysis where Black servicemembers were 1.16 times more likely. The Army's study also found that Black servicemembers were 2.00 times more likely than White servicemembers to be tried in general and special courts-martial without a recorded investigation, compared to our analysis where Black servicemembers were 1.85 times more likely.²⁹ These discrepancies can be attributed to the use of different control variables specified in the model, different reference groups in our respective analyses, and lag times between investigations and court-martial cases.³⁰

The second study, also completed in December 2020, examined urinalysis data for the possibility of racial disparities in drug testing within the Army.³¹ The study investigated the prevalence of random drug testing and drug testing suspicion among Black, Hispanic, and White servicemembers, and whether any disparities in the Army's drug testing are consistent with racial bias in testing practices. The study found that (1) random drug testing occurs more regularly in occupations with more Black and Hispanic servicemembers; and (2) Black servicemembers are drug tested under suspicion at higher rates.

Army officials told us that the third study, which was completed in February 2021, is an extension of the initial HEARD data collection and analysis that controls for age, rank, education, gender, years of service, home of record, military occupational specialty, and installation. According to Army officials, these three studies are expected to be published as

²⁹The Army's study also performed additional analyses that controlled for attributes not considered in our review, such as Armed Forces Qualification test score, home state of record, and military occupational specialty. Their analyses found that the inclusion of these characteristics attenuated the likelihood of trial in general and special courts-martial for Black and Hispanic servicemembers compared to White servicemembers, but these racial differences were still statistically significant.

³⁰GAO's analysis controlled for gender, rank, race, and age. The Army's analysis controlled for gender, rank, race, and education. For our analyses assessing the likelihood of: (1) general and special court-martial trials with investigations, and (2) general and special court-martial trials without investigations, our analyses used distinct and corresponding reference groups of: (1) servicemembers with investigations, and (2) servicemembers without investigations, respectively. However, the Army used the same reference group of all servicemembers for both of these analyses. In addition, our investigations data was pulled in 2018, while the Army's data was pulled in 2020, which contributes to the higher number of court-martial cases with investigations in the Army's data. OEMA also uses both the GAO investigation window (2013-2017) and a larger window (2001-2017) to estimate its results. According to Army OEMA officials, merging investigations from a larger date range (2001-2017) facilitates linking courts-martial to investigations started prior to 2013 (due to either lengthy investigation times or the associated courts-martial were in the early part of the 2013 to 2017 window).

³¹R. Patterson and K. Greenberg, "Examination of Racial Disparities in Army Urinalysis Drug Testing," (OEMA, Dec. 1, 2020, forthcoming). The study used drug test results pulled from the Drug and Alcohol Testing Management Information System and linked to Army personnel data at the individual level from 2018 and 2019.

chapters in the larger Holistic Evaluation and Assessment of Racial Disparity study, which has an estimated completion date of October 2021.

Overview of Navy and Marine Corps Studies

The Navy has conducted two studies on racial and gender disparities. The first study identified gender disparities in misbehavior rates among enlisted Marines and Sailors from fiscal year 1999 to fiscal year 2015.³² The misbehaviors studied for Marines in the first study included nonjudicial punishments, courts-martial, demotions, and misconduct-related separations.³³ Misbehaviors studied for Sailors in both studies included placement in a disciplinary status, demotions, and misconduct related separations. The first study found that over this entire time period, women had lower rates of misbehavior than men in all categories. The second study identified racial disparities in misbehavior rates among enlisted Sailors from fiscal year 1999 to fiscal year 2019.³⁴ The second study found that Black and American Indian/Alaskan Native enlisted Sailors were placed in disciplinary status at a higher rate and typically had higher rates of demotion and misconduct-related separation than White and Asian/Pacific Islander enlisted Sailors. This study also found that these disparities for Black enlisted Sailors existed for all but one year of the approximately 21-year period reviewed.

In addition, the Marine Corps Directorate of Analytics and Performance Optimization is conducting two studies relevant to diversity. The first study examines whether and how health, sociodemographic (e.g., race), behavioral, or career factors explain the risk of being a Marine subject of sexual assault and/or a victim of sexual assault.³⁵ The study will also examine how disciplinary actions, or lack thereof, affect the career of Marine subjects and victims, and if disciplinary actions vary by race, gender, rank, and sexual assault accusation/conviction. The Directorate will partner with the Marine & Family Programs and Military Justice – Judge Advocate Division to inform analyses, interpret results, and provide actionable

³²A. Kraus, *et al.*, *Gender Differences in and Costs of Misbehavior among DON Enlisted Personnel*, DRM-2019-U-019345-Final (Arlington, VA: CNA, April 2019). For purposes of this study, misbehavior was defined as offenses covered by the punitive articles of the UCMJ, which can range from minor disciplinary infractions to serious criminal offenses. Misbehavior is measured by certain events recorded in personnel records. For Sailors this included placement in a disciplinary status, demotions, and misconduct-related separations as indicators of misbehavior. For Marines this included nonjudicial punishments, courts-martial, demotions, and misconduct-related separations. The study reviewed personnel record data from active-duty Navy and Marine Corps servicemembers from fiscal years 1999 to 2015 and used the misbehavior indicators to compute rates of misbehavior by gender. The study also reviewed research literature and Navy policies and budgets to develop a list of types of costs to the Navy related to misbehavior: (1) directly generated by misbehavior (e.g., missed workdays); (2) response-related (e.g., leadership time spent on the matter); and (3) outcome-related (e.g., administrative separations, which were not included in the scope of our May 2019 report). The study then captured existing per-incident dollar estimates or calculated estimates themselves using available budget data. Using these estimations, the study calculated an annualized approximation of the extra financial costs to the Navy and Marine Corps of male misbehavior in fiscal year 2015.

³³In this study, misconduct-related separations include: (1) administrative separations (general discharge and other-than-honorable discharge); (2) punitive separations (bad conduct discharge and dishonorable discharge); and (3) mandatory misconduct separation for misbehaviors that include, but are not limited to, sexual misconduct and supremacist or extremist conduct. Administrative separations were not included in the scope of our May 2019 report.

³⁴D. Lien, *Race Differences in Misbehavior among USN Enlisted Personnel*, DSA-2020-U-027471-2REV (Arlington, VA: CNA, June 25, 2020). This study used the same framework of personnel indicators as Kraus et al. to identify racial differences in Navy personnel records for enlisted personnel from the Navy's Enlisted Tracking File (ETF) from September 1998 to December 2018. The study divided the data into longitudinal files to focus the analysis on career occurrences: (1) pre-Fleet student, (2) full duty at sea, and (3) full duty at shore. The study did not report data for a year in which it observed less than 5 cases nor data categorized as combined or unknown.

³⁵According to a Marine Corps official, Marine subjects of sexual assault refers to any person under investigation for sexual assault or any person convicted (perpetrator) of sexual assault.

recommendations. Marine Corps officials told us that analyses for this study began in September 2020 and will conclude in 2024. A Marine Corps official said that annual, preliminary results are pending final approval and distribution.³⁶

The second study will examine racial, ethnic, and/or gender disparities or inclusion indicators across Marine career trajectories. These include milestones, such as board selection, and separation, as well as criminal incidences (e.g., sexual assault). Analyses began in March 2021 and will be ongoing, given the exploratory nature of the research questions.³⁷

Overview of Air Force Studies

In December 2020, the Air Force Inspector General published a review that confirmed racial disparities for Black servicemembers across several areas in military discipline processes, personnel development, and career opportunity.³⁸ For example, the report found that, among other things, enlisted Black servicemembers were 72 percent more likely than enlisted White servicemembers to receive nonjudicial punishments, and 57 percent more likely than White servicemembers to face courts-martial. These findings are consistent with those in our May 2019 report.³⁹ While the review focused on the existence of racial disparities, it did not assess the causes of those disparities.

In February 2021, the Air Force directed the Air Force Inspector General to conduct a follow-on study that expands the scope of the first study to look at disparities faced by non-Black minority servicemembers across genders in three additional race categories (Asian, American Indian or Alaskan Native, and Native Hawaiian or Pacific Islander) and one additional ethnicity category (Hispanic/Latino). The officials told us that the report is scheduled to be released in the summer of 2021. In a press release announcing the second review, the Air Force said it will release the findings of the report in conjunction with the results of a 6-month assessment of actions taken in response to the initial racial disparity review.

³⁶U.S. Marine Corps Directorate of Analytics and Performance Optimization, *Understanding Sexual Assault in the Marine Corps* (forthcoming). Data sampled for the study include administrative/personnel data, destructive behavior data (e.g., suicide and inter-partner violence), medical data, Marine & Family Programs (MF) Sexual Assault Response Coordinator Defense Sexual Assault Incident Database (DSAID) and DSAID Legal Officer data. Data is inclusive of fiscal years 2014 to 2020.

³⁷U.S. Marine Corps Directorate of Analytics and Performance Optimization, *Examining Diversity and Inclusion in the Marine Corps* (forthcoming). Upon approval of data share agreement for medical data, the study will examine health outcomes across various sociodemographic groups. The Directorate will partner with the Judge Advocate Division among other potential stakeholders.

³⁸The Inspector General for the Department of the Air Force, *Independent Racial Disparity Review*, Report of Inquiry, S8918P (December 2020). The Air Force Inspector General employed a mixed methodology of qualitative and quantitative analyses to conduct its review. The Air Force Inspector General anonymously surveyed over 123,000 Air Force servicemembers; conducted small-group discussions with more than 1,300 Air Force and Space professionals; explored key themes in an additional 138 in-person group discussions; and reviewed over 27,000 pages of free-text comments from Air Force servicemembers and civilians. The study also examined Air Force military justice data dating back to fiscal year 2012; reviewed career development and opportunity data involving civilian, enlisted, and officer ranks; reviewed all pertinent Air Force Instructions and related publications; re-examined 23 past studies and reports involving race and demographics in the military; and examined other information and data.

³⁹The Air Force Inspector General review identified disparities in career opportunity and professional development that were not included in the scope of our May 2019 report. For example, disparities found in the review included underrepresentation of Black servicemembers in promotions to E-5 through E-7 and O-4 through O-6, and Definitely Promote allocations for O-5 and O-6. Additionally, the review found Black, permanent, full-time civilians are underrepresented in GS-13 through Senior Executive Service grades. However, the review also revealed no consistent disparity in retention rates by race.

Additionally, a senior Air Force official told us that the Air Force is currently in the early stages of a collaboration with the RAND Corporation to conduct a Military Discipline Disparity Study. The official stated that the focus of the study is to identify potential causes of military justice disparities. As of June 2021, the official told us they were working with RAND on the scope of the review, and anticipate that the study will be finished by the end of fiscal year 2021.

We believe that conducting comprehensive analyses into the causes of disparities in the military justice system would better position DOD and the military services to identify actions to address disparities, and thus help ensure that the military justice system is fair and just, a key principle of the UCMJ. While the respective military service studies will provide helpful insights, we continue to believe that it is important for DOD to initiate and complete the department-wide study that we recommended, so that they can identify any department-wide concerns, and take appropriate corrective actions.

Enclosure III: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to the contact named above, Kimberly C. Seay, Assistant Director; Renee S. Brown; Vincent M. Buquicchio; Christopher Gezon; Won Lee; Serena C. Lo; Molly Miller; Benjamin L. Moser; Dae B. Park; Samuel J. Portnow; and Clarice Ransom made key contributions to this report.

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