

Congress of the United States
House of Representatives
Washington, DC 20515-4302

March 18, 2019

Hon. Richard Spencer
Secretary of the Navy
1000 Navy Pentagon
Room 4D652
Washington, DC 20350

Dear Secretary Spencer:

We are writing to express our concern regarding a policy issue that has come to light as a consequence of the case of Special Warfare Operator Chief Petty Officer (SOC) Edward Gallagher, United States Navy. Chief Gallagher has been in pre-trial confinement since his arrest on September 11, 2018. The recent delay of Chief Gallagher's trial so that the defense can review a large volume of recently received government documents means he will ultimately spend nine months in confinement before his court-martial. In addition, we have received reports that Chief Gallagher's access to counsel and access to food and medical care may have been restricted. As a result, we respectfully request that you review the Navy policies governing pretrial confinement for Chief Gallagher and other service members to ensure compliance with the Uniform Code of Military Justice.

Chief Gallagher is currently being held in the Naval Consolidated Brig Miramar, in a housing unit that houses both pretrial and post-trial confinees. In other words, Chief Gallagher and other pretrial service members are intermingled with convicts who have been tried at court-martial, found guilty and sentenced to confinement. In addition, we have received other complaints about the circumstances of Chief Gallagher's confinement. Namely:

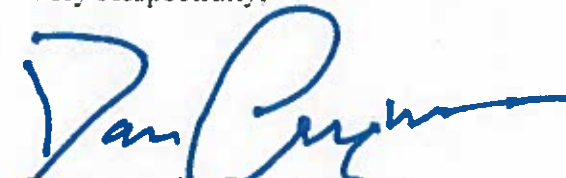
- Chief Gallagher's family and friends have reported that he has not had sufficient access to his defense counsel. As you know, a defendant's access to counsel and legal resources during the pretrial stage is essential to developing an effective defense. In fact, the Miramar Brig SOP for pretrial confinement contains two paragraphs emphasizing the importance of access to counsel and legal resources. Given the gravity and complexity of the charges against him, Chief Gallagher's ability to meaningfully participate in the preparation of his defense is crucial.
- We have also received reports that Chief Gallagher has not had adequate access to sufficient food and medical care. Chief Gallagher's family has informed us that he has serious injuries related to combat for which he was receiving on-going care prior to his confinement. Now that he is in pretrial confinement, we are concerned that the logistical challenges associated with intermingling pretrial and post-trial confines may have limited his access to sufficient food and delayed comprehensive medical diagnosis and treatment. Chief Gallagher, like every service member in pretrial confinement, is entitled to comprehensive and timely medical treatment for service-connected injuries.

As you know, SECNAV Instruction 1640.9c, Article 4206 makes clear that, where possible, "different custody classification prisoners" should be housed "in different and separate areas." This policy is a reflection of the fundamental principle that service members in pretrial confinement remain innocent until proven guilty. Further, Rules for Court-martial 304 and 305 of the Uniform Code of Military Justice (UCMJ) emphasize that "Pretrial restraint is not punishment and shall not be used as such." Given the significant difference in the treatment and liberties of pretrial and post-trial prisoners, and the Navy policy favoring the separation of these two populations, it is difficult to understand why they are intermingled at Consolidated Brig Miramar. Co-mingling these two dramatically different groups sends a confusing message regarding the constitutional protections discussed above, and likely causes significant logistical challenges for confinement facility staff. In fact, these logistical challenges may be contributing to some of Chief Gallagher's problems with access to counsel and timely medical treatment.

Chief Gallagher is a decorated warfighter who, like all service members, is entitled to the presumption of innocence while awaiting court-martial. In accordance with Rule for Court-martial 304(f), you, as the Secretary of the Navy, are responsible for establishing regulations governing the facilities and treatment of service members in pretrial confinement. We therefore request that you review the underlying reasons for co-locating pretrial and post-trial confinees at Consolidated Brig Miramar and whether the current arrangement fundamentally disadvantages Chief Gallagher and other pre-trial service members. Furthermore, we request that you consider whether other locations are more appropriate for pretrial confinement.

Thank you for your continued concern for our service members and we look forward to your response.

Very Respectfully,



Representative Dan Crenshaw
Member of Congress





Rep. Mac Thornberry
Member of Congress




Rep. Jim Jordan
Member of Congress


Rep. Kelly Armstrong
Member of Congress



Rep. Jim Banks
Member of Congress


Rep. Paul Cook
Member of Congress


Rep. Louie Gohmert
Member of Congress



Rep. Paul A. Gosar D.D.S
Member of Congress


Rep. Jody Hice
Member of Congress


Rep. French Hill
Member of Congress



Rep. Brian Mast
Member of Congress



Rep. Ralph Norman
Member of Congress



Rep. Pete Olson
Member of Congress


Rep. Guy Reschenthaler
Member of Congress


Rep. Austin Scott
Member of Congress


Rep. W. Gregory Steube
Member of Congress


Rep. Van Taylor
Member of Congress


Rep. Michael Waltz
Member of Congress