

Executive Committee Agenda

Location: Virtual Attendance Only

Date: December 6, 2023

Teleconference Number: +1 301 715 8592

Time: 3:00 p.m. (Eastern Time)

Meeting ID: 845 5495 7307

Passcode: 666750

 Zoom Link: <https://us02web.zoom.us/j/84554957307?pwd=NDloeW5SQWVYTYS8rSt6YWWM0NHYxUT09>

- I. Call to Order & Welcome - *Commissioner Kinney, Chair*
 - a. Roll Call - *Commissioner House, Secretary*
 - i. () Commissioner Kraig Kinney [IN], Chair
 - ii. () Commissioner Wayne Denny [ID], Vice Chair
 - iii. () Commissioner Joe House [KS], Secretary
 - iv. () Commissioner Brad Vande Lune [IA], Treasurer
 - v. () Commissioner Aaron Koehler [WY], Member-at-Large
 - vi. () Commissioner Joe Schmider [TX], Immediate Past Chair
- II. Public Comments Regarding Matters Not on the Agenda - *Kinney*
- III. Old Business
 - a. Action: Review November 2023 Meeting Summary - *House*
 - b. Evaluate: Q4 2023 Commission Meeting
- IV. Reports
 - a. Treasurer's Report- *Vande Lune*
 - b. Chair's Report – *Kinney*
 - c. Bylaws & Rules Committee Report – *Schmider*
 - d. Executive Director's Report – *Donnie Woodyard, Executive Director*
- V. New Business
 - a. Review: Decision Item 12-01- Seal & Symbol for the Commission
 - b. Review: Decision Item 12-02 - Analysis of National EMS Coordinated Database (NEMSCD) for EMS Provider Statistics
 - c. Review: Position Paper 2023-01- Biometric Criminal History Checks for EMS Personnel
 - d. Review: Position Paper 2023-02- Privilege to Practice Code of Conduct
 - e. Review: Position Paper 2023-03- EMS Workforce Privacy Protection
- VI. National EMS Coordinated Database Administrator Update – NREMT
- VII. Partner Organization Updates
- VIII. Adjourn Meeting

Future Executive Committee Dates	Future Commission Meeting Dates
December 6, 2023	February 21, 2024
January 10, 2024	May 14, 2024
February 7, 2024	October 9, 2024 (Elections)
March 6, 2024	

Meeting Norms:

To allow for equal participation by all attendees during the meeting, please note the following guidelines for all attendees:

- Committee members are requested to join by video when possible.
- Public Attendees:
 - Public attendance is encouraged.
 - Microphones for all attendees will be muted upon arrival.
 - Please place your name and agency/organization in the chat.
 - Members of the public may request to speak during public comment periods by using the “raise hand” function that is found on the menu bar at the bottom of the screen. Staff will unmute your microphone. If you are attending by phone, press *9 to raise your hand and *6 to unmute.
 - Public attendees should announce their name and organization before speaking.
 - Public comments are limited to two minutes or less.
 - In the case of background noise, disruptive behavior, or comments exceeding two minutes, your microphone will be muted.

*All times are approximate. The chair may modify the agenda during the meeting at their discretion.



INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

MEMO: Commissioner Brown (VA)

To: Executive Committee
From: Donnie Woodyard, Jr
Subject: Recognition for Commissioner Gary Brown (VA)
Date: 21 NOV 2023

I am delighted to report that, in line with the motion passed by the Commission on November 15, 2023, the recognition token intended to honor Commissioner Gary Brown of Virginia upon his retirement has been successfully procured. Commissioner Brown's distinguished service, which spans over 40 years, including his role as the inaugural Commissioner for the Commonwealth of Virginia, has left an indelible mark on the Emergency Medical Services community.

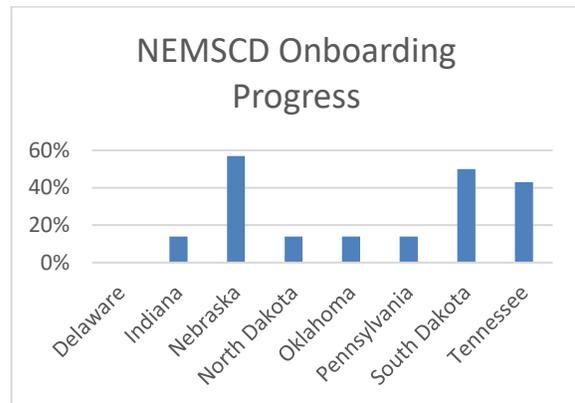
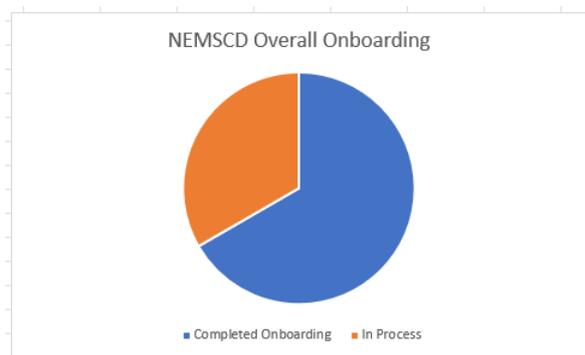




December 2023 NEMSCD Administrator Report

State EMS Statistics - NEMSCD

State EMS Office	Latest API Submission Date	First API Submission Date	Most Recent Discipline Created Date	Cases Created Last Four Months	Most Recent Discipline Update Date	Cases Updated Last Four Months
ALABAMA	12/02/2023	02/25/2021		0		0
COLORADO	12/04/2023	10/26/2020	12/01/2023	17	10/09/2023	17
DELAWARE				0		0
GEORGIA	12/04/2023	10/05/2021	08/03/2023	1	10/13/2021	1
IDAHO	12/04/2023	02/07/2022	10/17/2023	1		1
INDIANA	QA 10/27/2020			0		0
IOWA	12/01/2023	11/01/2023		0		0
KANSAS	12/04/2023	07/30/2021	07/31/2023	0		1
LOUISIANA	12/03/2023	08/10/2021	10/26/2023	15	10/27/2023	15
MISSISSIPPI	12/04/2023	04/28/2022		0		0
MISSOURI	12/04/2023	10/20/2021	01/14/2022	0		0
NEBRASKA	QA 10/10/2023			0		0
NEVADA	12/02/2023	09/28/2023		0		0
NORTH DAKOTA				0		0
OKLAHOMA				0		0
PENNSYLVANIA				0		0
SOUTH CAROLINA	12/04/2023	03/25/2021	10/12/2022	0		0
SOUTH DAKOTA	11/29/2023	08/27/2021		0		0
TENNESSEE	QA 11/02/2023			0		0
TEXAS	12/04/2023	04/02/2021	04/27/2023	0	09/19/2022	0
UTAH	12/04/2023	09/29/2021	07/25/2023	0	07/25/2023	0
VIRGINIA	12/04/2023	04/01/2020		0		0
WEST VIRGINIA	12/04/2023	10/20/2021		0		0
WYOMING	12/02/2023	06/16/2021	10/09/2023	1		1



Current NEMSCD Enhancement Projects	
EMS ID Primary Identifier	
National Registry Data Tab	
Seeking Software Solution/API	
	Delaware
	Indiana
	Oklahoma
	South Dakota

NEMSCD Fix Request to IT	
Provider w/ Double EMS ID #	
	Georgia
	Idaho
Posting Discipline Cases	Georgia



INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

MEMO: Decision Item 12-01

To: Executive Committee, Interstate Commission for EMS Personnel Practice
From: Executive Director, Interstate Commission for EMS Personnel Practice
Date: November 20, 2023
Subject: Decision Item: Approval of Official Seal for the Interstate Commission for EMS Personnel Practice

Decision Item Overview:

The purpose of this memorandum is to seek the Executive Committee's approval for an official seal for the Interstate Commission for EMS Personnel Practice. This seal will serve as a symbol of our commitment, history, and the unity of our mission in enhancing public safety through the regulation of EMS personnel across state lines.

Need and Purpose:

As a recognized governmental body overseeing the EMS Compact, the establishment of an official seal is a standard protocol. While our logo effectively represents our Commission, a circular seal will further solidify our identity and commitment to service. The proposed seal is rich with symbolism that encapsulates the history, mission, and collective spirit of the EMS Compact.

Description of the Proposed Seal:

The design of the seal is as follows:

- The central feature is a stylized white Star of Life within a hexagonal shape, set against a background of rich blue, symbolizing equilibrium, trust, and steadfastness.
- The Star of Life represents professionalism and unity, with a shining star at its core, indicating our unified voice and identity.
- An arrow pointing right, adjacent to the Star of Life, signifies our industry's progress and momentum.
- A red circle, reminiscent of the one found on the seal of the U.S. Department of Homeland Security, features 24 openings representing the member states and signifies overcoming bureaucratic barriers.
- The base of the emblem displays ten Stars of Life, in honor of the initial states whose collaborative efforts founded the EMS Compact.
- The emblem is set against a white backdrop, representing the purity, honor, and value of the EMS profession, with the colors red, white, and blue highlighting our dedication and unity.

Request for Executive Committee Action:

I hereby request the Executive Committee's approval of the proposed seal, which has been designed to reflect the history, integrity, and purpose of the EMS Compact. The adoption of this seal is a significant step in our continued mission to facilitate the interstate movement and recognition of EMS personnel, promote data sharing, enhance public safety, and foster national collaboration.

Attachments:

- Proposed Seal Design
- Symbolism and Significance Document



INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

MEMO: Decision Item 12-02

To: Executive Committee, Interstate Commission for EMS Personnel Practice

From: Executive Director, Interstate Commission for EMS Personnel Practice

Date: November 20, 2023

Subject: Decision Item: Analysis of National EMS Coordinated Database (NEMSCD) for EMS Provider Statistics

Overview of the Decision Item:

This memorandum proposes the analysis of the National EMS Coordinated Database (NEMSCD) to generate comprehensive statistics and insights about the EMS workforce in EMS Compact Member States. This initiative is unprecedented in the history of EMS profession.

Background:

The NEMSCD, utilizing the National EMS Identification number, is the sole source of de-duplicated state licensure data for EMS practitioners nationwide. This database offers a unique opportunity to obtain in-depth insights into the EMS workforce, including patterns of multi-state licensure and current certification statuses.

Need and Opportunity:

There is a significant need for a data-driven understanding of the EMS workforce to inform future decisions and policies. Analyzing the NEMSCD will allow the Commission to answer critical questions regarding multi-state licensure patterns, demographic data of providers, and certification statuses. This project will mark the first comprehensive analysis of its kind, providing valuable insights into the EMS workforce at a national level.

Executive Director Recommendations:

1. **Partnership Exploration:** Propose a partnership with the National Registry of EMTs (NREMT) Research Director. This collaboration aims to leverage expertise in the design and execution of the analysis, ensuring the production of a high-quality, insightful report.
2. **Data Protection and Ownership:** Ensure that all data remains protected throughout the analysis. The final report will be generated for the Commission's use, with the potential to develop and publish research-quality articles to further our understanding of the national EMS workforce.
3. **Funding:** I will investigate potential funding opportunities to cover the costs associated with this research project.

Request to the Executive Committee: I hereby request the Executive Committee's approval to:

1. Pursue a partnership with the NREMT Research Director to explore and define the project scope.
2. Take necessary steps to implement this research, including securing funding and ensuring data protection.

This initiative represents a significant step towards a comprehensive and data-driven understanding of the EMS workforce. Your approval of this proposal will enable the Commission to undertake a vital project, of national significance, that promises to provide unprecedented insights into the EMS workforce. This initiative is not only a step forward in understanding our current workforce landscape but also a foundation for informed decision-making in the future.

Project Plan for NEMSCD Analysis

Project Title: Analysis of National EMS Coordinated Database (NEMSCD) for EMS Provider Statistics

Executive Summary: This project aims to analyze the NEMSCD to gain unprecedented insights into the EMS workforce at a national level. The key objectives include understanding multi-state licensure patterns, certification statuses, and demographic data of EMS practitioners.

Project Objectives:

1. To analyze the EMS workforce data for patterns of multi-state licensure.
2. To determine the number of practitioners with current or expired NREMT certifications.
3. To gather demographic data of EMS providers.
4. To generate a comprehensive report and potentially research-quality articles.

Scope:

- Data Analysis of NEMSCD.
- Partnership with NREMT Research Director.
- Report Generation.

Deliverables:

1. Comprehensive analysis report of NEMSCD.
2. Potential research-quality articles.
3. Recommendations for future EMS workforce research.

Project Timeline:

1. **Initiation and Planning (Duration: 2-3 months)**
 - Formalize partnership with NREMT.
 - Define project scope and objectives.
 - Develop detailed project plan and timeline.
2. **Data Collection and Analysis (Duration: 3-4 months)**
 - Secure data access.
 - Data cleansing and preparation.
 - Data analysis.
3. **Report Writing and Review (Duration: 2-4 months)**
 - Draft report generation.
 - Review and revisions.
 - Final report preparation.
4. **Dissemination (Duration: 1 month)**
 - Presentation to the Commission.
 - Publication of findings (if applicable).



INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

MEMO: SCRA & EMS Licensing

To: State EMS Officials
From: Donnie Woodyard, Jr
Subject: Summary of SCRA Amendment and Its Importance for EMS Compact
Date: ___ DEC 2023

This memo outlines the recent amendment to the Servicemembers Civil Relief Act (SCRA) and its implications, with a focus on EMS licensure and the EMS Compact for State EMS Officials.

SCRA Amendment Overview

Public Law 117–333, §19(a), Jan. 5, 2023, 136 Stat. 6137, amended the Servicemembers Civil Relief Act, mandating portability for professional licenses for service members and their spouses during relocation due to military orders. This legislation, however, does not apply to licenses for practicing law. The law requires states to recognize professional licenses and certificates from other jurisdictions, including EMS licenses. Importantly, it allows service members or their spouses to use their existing licenses in new jurisdictions without needing to obtain new licenses. As evident by a November 2023 U.S. District court decision (*Portee v. Morath*), states are compelled to recognize a professional license, even if the state licensure requirements are different.

Importance of the SCRA Federal Law Amendment for the EMS Compact

- **Role of Interstate Compacts:** The federal law underscores the significance of interstate compacts in facilitating license portability. It recognizes these compacts as essential for professional mobility, particularly for servicemembers and their spouses. If a jurisdiction is part of an interstate licensure compact, such as the EMS Compact, the SCRA defers to the compact's provisions.
- **Impact on EMS Compact:** The SCRA amendment strengthens the role of the EMS Compact for State EMS Officials. The Compact enables member states to retain and enhance authority over public protection and accountability for EMS providers within their jurisdiction.
- **Licensure Standards:** Although the EMS Compact sets unified standards for EMS license issuance, it is important to note that the SCRA does not define or require uniform licensing standards. Under the SCRA law states are required to recognize professional licenses (including EMS) issued by other jurisdictions, even if the other jurisdiction's requirements are different.
- **Authority and Public Protection:** The EMS Compact grants states the ability to maintain high EMS service standards through control over licensure and certification processes. Under the Compact, states have the authority to conduct cross-jurisdictional inquiries and investigations, share real-time licensure and investigation data via the National EMS Coordinated Database, and are required to share sanctions and license discipline with other Member States. These provisions are not included in the SCRA.

The EMS Compact strongly supports the professional licensure of military personnel and spouses. It requires all Compact Member States to expedite licensure for military personnel. While recognizing the value of license portability under the SCRA, the Interstate Commission for EMS Personnel Practice recommends the Recognition of EMS Personnel Licensure Interstate Compact as the preferred method for ensuring mobility and

licensure recognition. Interstate compacts provide for multijurisdictional license portability while bolstering collaboration across states, ensuring effective and safe service by EMS providers, irrespective of military commitments.

State EMS Officials are encouraged to understand these changes and adapt their policies and practices to maintain high service standards and public protection.

Resource Links

- DOJ Fact Sheet: <https://www.justice.gov/media/1305496/dl?inline>
- Congressional Research Service Summary: <https://crsreports.congress.gov/product/pdf/R/R45283>
- DOJ Website Guide: <https://www.justice.gov/servicemembers/topics#license>
- News Article: <https://www.federaltimes.com/pay-benefits/mil-money/2023/11/20/a-victory-for-all-military-spouses-in-court-fight-over-job-license/>

DRAFT



INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

Position Paper 2023-01

Biometric Criminal History Checks for EMS Personnel

Introduction

EMS Practitioners, including Emergency Medical Technicians (EMTs), Advanced EMTs, and Paramedics, are integral to the health and safety of the American public and visitors. The practice of EMS requires frequent unscheduled interactions with patients in a variety of settings, and frequently the encounters may require individual, one-on-one care of vulnerable populations. As such, a high level of trust is placed in every EMS professional. This position paper reinforces the need for all states, territories, and jurisdictions to urgently implement uniform Federal Bureau of Investigation (FBI) compliant biometric criminal history records checks for all individuals seeking licensure as an EMS Practitioner in the United States.

The Imperative for Uniform Standards

Multiple Supreme Court decisions clearly established that states have the authority and responsibility to protect the public, and this is – in part – accomplished through the formal issuance of licenses to medical professionals, including EMS practitioners. The Supreme Court has affirmed that a state's licensing responsibility not only includes evaluating an individual's knowledge, skills, and abilities but also their character attributes. Today, meeting this standard and public expectation requires state officials to review primary source criminal history information via a biometric FBI compliant criminal history check. Reliance on self-disclosure for criminal background is both ineffective and unreliable.

In 2014, national EMS leadership organizations collaborated to write the Model Legislation for the Recognition of EMS Personnel Practice Interstate Compact (REPLICA) – the EMS Compact. This legislation requires all Compact Member States to perform an FBI compliant biometric criminal history check, as a prerequisite for state licensure. As of November 2023, 24 states have adopted this Model Legislation. While the majority of Compact Member States have already implemented this requirement, the remainder of Member States have until March 2025 to achieve compliance with this requirement. While some non-Compact states have voluntarily implemented this requirement, there is currently no uniform requirement for non-Compact states. The EMS Compact urges all states, territories, and jurisdictions to urgently implement uniform FBI-compliant biometric criminal history checks for all individuals seeking licensure as an EMS Practitioner in the United States.

Core Justifications

- Commitment to Public Health, Safety, and Welfare
 - The foremost priority of the collective profession is to protect the public. A uniform background check ensures that state/territory personnel have reliable, primary-source information available when making licensure decisions.
- Upholding Professional Standards and Ethics
 - EMS personnel are expected to adhere to a professional standard. Uniform background checks enhance the credibility and trustworthiness of the profession.
- Necessity of Public Trust
 - Emergency medical services operate on the premise of public trust. Standardized criminal history checks are vital for maintaining this trust and enabling informed decisions by state licensing officials.

- Unique Challenges of EMS Service Delivery
 - Unlike other professions, EMS personnel often serve patients in unscheduled, urgent situations where individuals are extremely vulnerable and cannot pre-research or choose their EMS providers.

Recommendations

- **Uniform Standard:** A biometric, FBI-compliant criminal history check should be universally required as a prerequisite prior to issuing new licenses (including state-issued certifications) for EMS Personnel in all states and territories.
- **Primary Source Data:** States should make licensing decisions based on primary source data that is securely transferred directly from the primary source (FBI) to the state licensing office. The primary source data evaluated by the state/territory licensing official should include, at minimum, the results of an FBI compliant criminal history records check.
- **Continual Feedback:** State and territory licensing offices should, when possible, enroll in the FBI Rap-Back service so that the licensing official is notified if the applicant engages in criminal activity where fingerprints are taken and reported to the national system. Rap-Back reduces the need to re-fingerprint EMS personnel and saves time and money.
- **State Sovereignty:** The mere presence of a criminal conviction should not serve as an automatic disqualification. States should have the ability to make informed decisions based on their laws, regulations, adopted policies and practices.

Call For Action

Representing the EMS Compact Member States, we urge every state and territory across the United States to adopt mandatory policies that require FBI-compliant biometric criminal history screenings for EMS licensure. This action is crucial for public health and safety and reflects the rigorous standards of medical professional credentialing. By uniting under this practice, we reinforce our collective commitment to earn and maintain the public's trust, an essential foundation of our profession.

We implore state legislatures to promptly update their laws, ensuring biometric, FBI-compliant checks are fundamental to EMS licensure, thus upholding the highest safety and trust standards. Join us in affirming this commitment.

Historically, the U.S. legal system, supported by Supreme Court rulings, has recognized that medical licensure must consider more than just professional knowledge—it must integrate a comprehensive assessment of factors critical to the public's well-being. In emergency medical services, where situations are unpredictable and time-sensitive, the public's unwavering trust is imperative.

As many states have already incorporated this requirement, we call upon all states and territories to unify these efforts into a national standard to guarantee consistency, trust, public protection and professional accountability in our national EMS system.

Disclaimer: The position papers produced by the Interstate Commission for EMS Personnel Practice are designed to document the official positions of the Commission. It is important to note that these position papers are not administrative rules and do not possess any enforceable authority. Instead, they are intended to provide perspectives and insights on various matters of policy. These documents are meant to guide and inform but should not be mistaken for legally binding regulations or mandates.



INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

Draft Position Paper 2023-02 Privilege to Practice Code of Conduct

Introduction

DRAFT POSITION PAPER

Medical professions adopt codes of conduct to reinforce expectations, establish, and maintain professional standards of behavior and ethical conduct. These codes serve as guidelines that outline the expected conduct, responsibilities, and ethical principles that healthcare professionals should adhere to in their practice. The Hippocratic Oath, which is one of the oldest and most well-known codes of conduct in healthcare, has been a guiding principle for physicians for centuries. Its emphasis on ethical principles such as confidentiality, honesty, and respect for patients has influenced the development of modern codes of conduct for healthcare professionals.

The EMS Compact has nearly 400,000 individual EMS Practitioners with a Privilege to Practice in 24 Member States. There is a need for a unified Code of Conduct that is adopted and implemented by all states and jurisdictions licensing EMS personnel. Codes of conduct help in ensuring high standards of behavior and ethical conduct in the field and they serve as a critical tool in maintaining public trust in the profession. Therefore, the EMS Compact is calling upon State Licensing authorities to collaborate in the development and adoption of a Uniform EMS Code of Conduct.

Sample Uniform Code of Conduct

To assist with this process, the following Sample Uniform EMS Code of Conduct is being offered as a starting point:

As a professional EMS Practitioner, I commit to upholding the following code of conduct:

- Promote professionalism and provide competent emergency medical care to all people.
- Use my professional knowledge and skills to promote health, alleviate suffering, and do no harm.
- Treat all patients with respect, compassion, and dignity.
- Assume responsibility to uphold professional standards and education, striving to provide competent medical care to every patient that I encounter.
- Advocate for patients that lack medical decision-making capacity and ensure equal access to medical services.
- Act responsibly, ethically, and lawfully to enhance the reputation of the profession.
- Work cooperatively with other healthcare professionals in the best interests of our patients.
- Act with honesty by being objective, truthful, and complete. I will include all relevant information in data collection and reporting, statements, applications, and testimony.
- Acknowledge errors and will not distort or alter facts.
- Exercise a level of care and judgment consistent with my level of licensure, certification, and training.
- Abide by all applicable state and federal laws, rules, regulations, and permits.

Furthermore, I understand that as an EMS Practitioner licensed in the state of << State >>:

DRAFT POSITION PAPER

- It is my professional responsibility and obligation to read, understand, and comply with all << State >> statutes and regulations related to the provision of Emergency Medical Services.
- I can only function as an EMS Practitioner if my license is current, and I have authorization from an EMS Medical Director.
- Maintaining my license and tracking my expiration date is my individual responsibility.

As an EMS Practitioner, I acknowledge and understand that:

- The State may review and request further information for consideration about any violation of any state or federal law, rules, regulations including but not limited to violations that have been dismissed, deferred, or sealed when determining my fitness to practice as an EMS Practitioner.
- Failure to follow this code of conduct provides just cause for disciplinary action by the Department.
- Sanctions or discipline imposed on my license will be a public record and final dispositions will be reported to the National Practitioner Data Bank, the Interstate Commission for EMS Personnel Practice, and the National Registry of Emergency Medical Technicians.

DRAFT POSITION PAPER - DRAFT POSITION PAPER



INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

Draft Position Paper 2023-03

EMS Workforce Privacy Protection

Introduction

The Interstate Commission for EMS Personnel Practice recognizes the importance of balancing public access to EMS personnel licensure data while concurrently protecting the privacy and security of the workforce. Considering increasing threats of doxxing, especially targeting public health, healthcare, and government employees following the COVID-19 pandemic, and heightened concerns about terrorism threats (domestic and global), cybersecurity, and national security, there is a pressing need to ensure reasonable safeguards are in place to protect EMS personnel's personal information. This position paper aims to address these concerns by proposing guidelines for states to protect bulk access to EMS personnel data, ensuring primary source validation of EMS practitioners' licenses while safeguarding their individual privacy and security.

Background:

EMS personnel play a crucial role in public health and safety, and their license credentials must be verifiable. However, the exposure of personal information poses a significant risk to their safety, especially in the current environment of increased doxxing and security threats. Balancing the need for public and employer access to EMS personnel data with privacy and security concerns is essential.

Public Access to Licensing Systems:

The public should have access to perform queries of licensing systems to verify EMS practitioners' credentials. This access can be facilitated by providing options to validate an EMS practitioner's license status by using the practitioner's name, National EMS ID number, or state issued license number. The information displayed to the public should include:

1. Provider's name
2. License level
3. National EMS ID number
4. Expiration date of the license
5. License status (active, inactive, restricted, expired, etc.)

Protection of Personal Identifiable Information (PII):

To safeguard EMS personnel's Personal Identifying Information (PII), privacy and security, certain information should be restricted. Restricted information should include: residential addresses, phone numbers, email addresses, and other PII. The exposure of this information is not necessary to validate a license and poses a direct risk to the safety and well-being of EMS responders, especially in cases of doxxing or harassment.

Bulk Release of Records:

The bulk release of EMS personnel records, including the release of all EMS practitioners licensed in a particular state or region, should be restricted and limited to cases where it is absolutely necessary for the public's health, safety and welfare. When such releases are determined to be justified, minimum data sets necessary to fulfill the justified purpose are encouraged. For example, a minimum data set may include:

1. EMS Practitioner's First Initial and Last Name
2. License level
3. License status
4. Expiration date of the license

This minimal data set is sufficient for most verification and reporting needs, while minimizing the risk associated with the exposure of additional personal information.

National Security Implications:

Exposing full datasets that include home addresses of EMS personnel and other PII presents a significant security risk. In an era of increasing cyber threats and the potential for hostile actors to exploit large datasets, the protection of this sensitive information is paramount. Ensuring that EMS personnel's personal data is secure is not only in the interest of individual responders but also critical for national security.

Conclusion:

The Interstate Commission for EMS Personnel Practice urges all states (Compact and Non-Compact) to take immediate action by reevaluating and strengthening their data security policies. This initiative is crucial to ensure the comprehensive protection of Personal Identifiable Information (PII) and sensitive data related to EMS Practitioners. Striking a balance between public and employer access to EMS personnel data is paramount, especially in light of the growing threats of doxing and the escalating concerns surrounding cyber and national security.

States must act swiftly to implement these measures. By doing so, they not only uphold the integrity of EMS personnel licensing systems but also safeguard the privacy and security of those who tirelessly serve on the frontlines of public health and safety. Join us in this vital mission to secure the data of EMS personnel and fortify our nation's defenses.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HANNAH MAGEE PORTÉE,

Plaintiff,

v.

CIVIL ACTION NO. 1:23-cv-00551-RP

MIKE MORATH, in his official capacity
as COMMISSIONER OF EDUCATION,
TEXAS EDUCATION AGENCY, and
STATE BOARD FOR EDUCATOR
CERTIFICATION,

Defendants.

STATEMENT OF INTEREST OF THE UNITED STATES

The United States of America respectfully submits this Statement of Interest under 28 U.S.C. § 517¹ to address important issues of first impression regarding the scope of a recent amendment to the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. § 4025a. This provision, which took effect on January 5, 2023, provides for the portability of the professional licenses of servicemembers and their spouses. The United States respectfully requests that the Court consider this Statement of Interest in evaluating Plaintiff’s Motion for Preliminary Injunction [Doc. 5] (the “Motion”).

The Statement of Interest sets forth three arguments in support of Plaintiff’s motion. First, it asserts that Plaintiff is likely to succeed on the merits of her claim that her school counseling licenses are covered under Section 4025a. Second, it discusses why vigorous

¹ Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

enforcement of Section 4025a serves the public’s exceptionally strong interest in national defense and military readiness. Finally, it explains why Plaintiff has standing to bring this action.

I. INTEREST OF THE UNITED STATES

The Attorney General has authority to enforce the SCRA, *see* 50 U.S.C. § 4041(a), and has a strong interest in ensuring the proper interpretation of the statute. Congress enacted the SCRA to “provide for, strengthen, and expedite the national defense” by enabling servicemembers “to devote their entire energy to the defense needs of the Nation.” 50 U.S.C. § 3902(1). The SCRA was enacted pursuant to Congress’s war powers, and the statute is housed in Title 50 of the United States Code, which relates to the military and national defense.

Many of the rights and protections granted by the SCRA advance national security by promoting the financial readiness² of servicemembers and their families. The Secretary of Defense has noted that “[o]ur people and our [military] readiness remain inextricably linked, and we remain the preeminent fighting force in the world because we strive to continuously improve how we care for people.”³

Without vigorous enforcement of the SCRA, including Section 4025a, our Nation’s ability to meet its critical defense needs will suffer. As no court has yet interpreted the SCRA’s license portability provisions, this case presents important issues of first impression.⁴

² The Department of Defense defines “financial readiness” as “the state in which successful management of personal financial responsibility supports a servicemember’s ability to perform their wartime responsibilities.” Department of Defense (DoD) Instruction 1342.22: Military Family Readiness at 53.

³ Secretary of Defense Memorandum, “Strengthening Economic Security in the Force,” (November 17, 2021) at 1. <https://media.defense.gov/2021/Nov/17/2002894808/-1/-1/1/STRENGTHENING-ECONOMIC-SECURITY-IN-THE-FORCE.PDF>

⁴ To the extent Defendants wish to respond to the arguments raised in this Statement of Interest, and request leave from the Court to file a sur-reply to do so, Plaintiff’s counsel has represented to the United States that he will not oppose that request.

II. BACKGROUND

According to her Complaint [Doc. 1] and Affidavit in support of the Motion [Doc. 5-1], Plaintiff Hannah Magee Portée (“Plaintiff”) is a military spouse and licensed school counselor. Doc. 1 at ¶2; Doc. 5-1 at ¶2. Plaintiff was licensed as a school counselor in the state of Ohio on July 21, 2021, and was licensed as school counselor in the state of Missouri on July 7, 2022. Doc.1 at ¶23. Both licenses are in good standing. *Id.* at ¶37. In 2022, Plaintiff was employed as a long-term substitute counselor at a middle school in Ohio and a guidance counselor at an elementary school in Missouri. *Id.* at ¶27.

On July 29, 2022, Plaintiff married Captain David Portée, an active-duty Air Force Officer. *Id.* at ¶26. Prior to the wedding, Captain Portée had received military orders for a permanent change of station from Scott Air Force Base in Illinois to Laughlin Air Force Base in Texas. *Id.* at Exhibit C. Captain Portée’s orders required him to report to Laughlin Air Force Base by January 9, 2023. *Id.* Plaintiff relocated to Texas to accompany Captain Portée. *Id.* at ¶¶ 8, 26.

On October 4, 2022, Plaintiff applied through the Texas Education Agency’s Educator Certification Online System for a school counselor certificate that would allow her to work as a school counselor in the state of Texas. *Id.* at ¶29. Plaintiff’s application was denied on the grounds that she failed to provide information verifying that she had two years of full-time wage-earning experience in the role of school counselor. *Id.* at ¶30.

In February 2023, Plaintiff learned of recent amendments to the SCRA that mandated the portability of licenses for servicemembers and their spouses. *Id.* at ¶32. Plaintiff reached out to Defendants to inform them of the requirements of the new law. *Id.* On February 27, 2023, the Texas Education Agency’s Director of Educator Credentialing responded, stating that Plaintiff

would need to provide “documentation verifying two (2) academic years of full-time, wage-earning experience in the role of school counselor or provide documentation of a classroom teaching certificate.” *Id.* at ¶33. He further stated that “during the call you mentioned an Air Force article stating something to the effect of automatically transferring certifications, however, this would not apply to Texas.” *Id.*

Thereafter, both Plaintiff and her military legal assistance attorney communicated with the Director of Educator Credentialing, attempting to explain the license portability requirements of the SCRA. *Id.* at ¶¶ 34-35. On March 2, 2023, the Director of Educator Credentialing emailed Plaintiff’s military legal assistance attorney and stated that because Section 4025a(c) requires that the license have been “actively used during the two years immediately preceding the relocation” due to military orders, Plaintiff would need to provide proof of “two creditable years of service in an Early Childhood-Grade 12 public or accredited private school in the specific student services area sought.” Doc. 5-1 at 5 (emphasis in original).

On May 17, 2023, Plaintiff filed a complaint alleging that Defendants had violated Section 4025a of the SCRA. Doc. 1. On June 16, 2023, Plaintiff filed a Motion for Preliminary Injunction seeking to enjoin the Defendants from:

1. Enforcing regulations, preempted by the Servicemembers Civil Relief Act, that disregard the federally mandated portability and validity of Plaintiff’s out-of-state school counselor licenses.
2. Arbitrarily interfering with Plaintiff’s vested property interest in her portable and valid out-of-state school counselor licenses as afforded to her by the Servicemembers Civil Relief Act, by declaring that since she cannot demonstrate two years of full-time, wage-earning experience in the role of a licensed school counselor, the State of Texas will not recognize her out of state licensure.
3. Enforcing regulations that prohibit Texas schools from employing Plaintiff in the State of Texas as a licensed school counselor.

Doc. 5 at 1-2. On July 7, 2023, Defendants filed an opposition to the Motion. Doc. 13.

III. THE SCRA'S PROFESSIONAL LICENSE PORTABILITY PROVISION

Section 4025a reduces the burdens associated with interstate military moves and allows military spouses to obtain meaningful employment more easily. *See* 50 U.S.C. § 4025a(a). It gives servicemembers and their spouses the right, for the first time, to port their professional licenses:

[i]n any case in which a servicemember or the spouse of a servicemember has a covered license and such servicemember or spouse relocates his or her residency because of military orders for military service to a location that is not in the jurisdiction of the licensing authority that issued the covered license, such covered license shall be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders

Id.

The term “covered license” means a professional license or certificate:

- (1) that is in good standing with the licensing authority that issued such professional license or certificate;
- (2) that the servicemember or spouse of a servicemember has actively used during the two years immediately preceding the relocation described in subsection (a); and
- (3) that is not a license to practice law.

Id. § 4025a(c).

The covered license shall be considered valid in another state if the servicemember or spouse:

- (1) provides a copy of such military orders to the licensing authority in the jurisdiction in which the new residency is located;
- (2) remains in good standing with-
 - (A) the licensing authority that issued the covered license;and

(B) every other licensing authority that has issued to the servicemember or the spouse of a servicemember a license valid at a similar scope of practice and in the discipline applied in the jurisdiction of such licensing authority;

(3) submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

Id. § 4025a(a).⁵

Military spouses are commonly employed in occupations that require professional licenses. A recent survey of military spouses found that the top three self-reported occupations for those in the labor force were teacher, child care worker, and registered nurse—all of which require a license or certification.⁶ Active-duty military spouses have a 21% unemployment rate, which is more than five times higher than that of the general population.⁷ This high rate of unemployment has been driven in part by frequent military moves and licensure requirements faced by spouses who move to a different state.⁸ Section 4025a reduces the administrative hurdles spouses face when they move across state lines.

⁵ Section 4025a also states that when a professional license is subject to an interstate licensure compact, the terms of that compact will govern. *See* 50 U.S.C. § 4025a (b). However, Texas is not part of any interstate licensing compact that would allow Plaintiff to use her Ohio or Missouri school counseling license to practice in Texas. Doc. 1 at ¶ 38.

⁶ Tong, Patricia K. et al., “Enhancing Family Stability During a Permanent Change of Station: A Review of Disruptions and Policies,” RAND Corporation, 2018 (“RAND Report”) at 12-13. https://www.rand.org/pubs/research_reports/RR2304.html

⁷ *See* Defense Personnel Analytics Center, Office of People Analytics, 2021 Active Duty Spouse Survey, <https://www.militaryonesource.mil/data-research-and-statistics/survey-findings/2021-spouses-survey/>. According to the Bureau of Labor Statistics, the national unemployment rate in May 2023 was 3.7%. *See* “The Employment Situation – May 2023 [News Release],” U.S. Department of Labor, June 2, 2023, <https://www.bls.gov/news.release/pdf/empst.pdf>.

⁸ Press Release, “DoD Releases Military Spouse Licensure Report,” U.S. Department of Defense, Feb. 22, 2020 <https://www.defense.gov/News/Releases/Release/Article/2091431/dod-releases-military-spouse-licensure-report/>.

Section 4025a also enhances the military's ability to retain highly trained and experienced servicemembers by promoting employment opportunities for their spouses. Military spouse employment is an important factor in force retention, as a spouse's satisfaction with career opportunities is a major factor in determining whether a servicemember decides to stay in the military.⁹ As family satisfaction is critical to the retention of married servicemembers, the U.S. military has a strong interest in ensuring that military spouses who want to work can find meaningful employment in their chosen field.

IV. ARGUMENT

A plaintiff seeking a preliminary injunction must show that she "is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). In this case, Plaintiff is likely to succeed on the merits of her claim against Defendants and the public interest strongly favors the issuance of an injunction.¹⁰ Plaintiff has also set forth factual allegations that establish she has standing to bring this action.

A. Plaintiff is Likely to Succeed on the Merits

Plaintiff is likely to succeed on the merits as the facts as alleged in the Complaint and set forth in Plaintiff's Affidavit establish a substantial likelihood that Defendants' conduct violated Section 4025a of the SCRA. First, the SCRA's license portability provisions apply to Plaintiff as

⁹ RAND Report at 18 (citing a survey indicating that 43% of military spouses said that the availability of career opportunities for both spouses was a very important factor affecting whether their spouse stayed in the military).

¹⁰ This Statement of Interest focuses only on the Plaintiff's claims that she is likely to succeed on the merits and that the public interest favors the issuance of an injunction. The United States does not take a position at this time on the merits of any claims not addressed in this Statement of Interest.

she actively used her professional licenses at some point during the two years preceding her relocation to Texas. Second, Defendants' interpretation of Section 4025a(c)(2), which requires that a license has been "actively used during the two years immediately preceding the relocation" due to military orders, as requiring two full years of continuous full-time employment is inconsistent with the plain meaning and the purpose and intent of the provision.

1. The SCRA's License Portability Provisions Apply to Plaintiff

The facts as alleged in the Complaint and set forth in Plaintiff's Affidavit establish that Plaintiff is entitled to have her Ohio and Missouri school counseling licenses recognized by Defendants. Section 4025a of the SCRA requires that a servicemember's or spouse's out-of-state professional license be recognized as valid if the servicemember or spouse: (1) holds a "covered license"; (2) has relocated to the jurisdiction due to military orders; (3) has provided a copy of the military orders to the licensing authority in the jurisdiction where they have relocated; (4) remains in good standing with the licensing authority that issued the license and every other licensing authority that has issued them a license valid at a similar scope of practice and in the discipline applied for; and (5) submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements. *See* 50 U.S.C. § 4025a(a). A "covered license" is defined as a professional license or certificate: (1) that is in good standing with the issuing licensing authority; (2) that the servicemember or spouse of a servicemember has actively used during the two years immediately preceding the relocation due to military orders; and (3) that is not a license to practice law. *See* 50 U.S.C. § 4025a(c).

In this case, all the requirements of Section 4025a appear to have been met. Plaintiff is the spouse of an active duty servicemember. Doc. 1 at ¶8; Doc. 5-1 at ¶4(c). In or around January

2023, she relocated to Texas due to her spouse’s military orders. Doc. 1 at ¶28; Doc. 5-1 at ¶4(e). Plaintiff submitted a copy of her spouse’s military orders to Defendants, is in good standing with the Ohio and Missouri licensing authorities that issued her licenses, and has agreed to submit to the authority of the Texas licensing authority for purposes of standards of practice, discipline, and fulfillment of continuing education requirements. Doc. 1 at ¶ 37; Doc. 5-1 at ¶4(h).

Plaintiff’s licenses are also “covered licenses” within the meaning of the statute. As noted above, Plaintiff is in good standing with both the Ohio and Missouri licensing authorities and her school counseling licenses are not licenses to practice law. Doc. 1 at ¶23; Doc. 5-1 at ¶4(a)-(b). Additionally, Plaintiff actively used her licenses “during the two years immediately preceding” her relocation to Texas. In 2022, Plaintiff was employed as a guidance counselor both at an elementary school in Missouri and as a long-term substitute counselor at a middle school in Ohio. Doc. 5-1 at ¶4(d).

2. Defendants’ Interpretation of Section 4025a(c)(2) is Inconsistent with the Plain Meaning and the Purpose and Intent of the Statute

In their Memorandum in Opposition to the Motion, Defendants contend that Plaintiff has not met the requirements for a covered license, arguing that in order to have actively used a license “during the two years immediately preceding” a relocation, a servicemember or spouse must have used the license full-time continuously throughout the two-year period preceding the relocation. *See* Doc. 13 at 2, 5. Defendants’ interpretation cannot be reconciled with either the plain meaning or the intent of the SCRA.

In interpreting a statute, a court is required to look at the plain language of the statute and to give the words used their plain and common meaning. *Perrin v. U.S.*, 444 U.S. 37, 42 (1979). Where a word is susceptible to more than one meaning, courts can discern the meaning of the statute by examining the context in which the word is used. *Deal v. United States*, 508 U.S. 129,

131-32 (1993). It is a “fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Id.* at 132.

The word “during” can either mean “throughout the duration of” or, alternatively, “at a point in the course of.” MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/during>. The context in which the word “during” is used in Section 4025a strongly suggests that Congress intended it to mean “at a point in the course of.” Section 4025a(c)(2) requires that the covered license have been “actively used during the two years immediately preceding the relocation.” If Congress had wanted to impose a requirement of continuous employment, it could have easily done so by requiring the license to have been “continuously used” during the two years immediately preceding the relocation. Instead, it required only that the license have been “actively used.” The word “active” is defined as “characterized by action rather than by contemplation or speculation.” MERRIAM-WEBSTER ONLINE DICTIONARY, <https://www.merriam-webster.com/dictionary/active>. By requiring that the license have been “actively used,” Congress undoubtedly intended to grant portability to spouses and servicemembers who had actually used their license *at some point* in the past two years and not throughout the entire time period.

Moreover, most courts that have considered the statutory meaning of “during,” when used to describe a certain period preceding an event, have construed it to mean at “at some point during” that period. *See, e.g., Darling v. United States*, 2016 U.S. Dist. LEXIS 117014, *13 (W.D. Tenn. Aug. 31, 2016) (holding that a state statute that required medical experts to have practiced in Tennessee or a contiguous state “during the preceding year” required only that they have practiced at some point during the preceding year and not throughout the entire preceding

year) (*citing Steele v. Ft. Sanders Anesthesia Group, P.C.*, 897 S.W.2d 270, 280 (Tenn. App. 1994)); *State v. Caprio*, 477 A.2d 67, 72 (R.I. 1984) (holding that an arson statute that required that the premises be occupied “during the six months preceding the offense” did not require a continuous occupancy throughout the entire six-month period; occupancy at “any point during the six-month period suffices”); *see also, St. Paul Fire & Marine Ins. Co. v. McCormick & Baxter Creosoting Co.*, 324 Ore. 184, 201 (1996) (“The common meaning of ‘during’ is ‘at some point in the course of’”).

Throughout the SCRA, Congress frequently uses the word “during” to mean “at one point in the course of.” For example, the provision protecting against nonjudicial mortgage foreclosures states that, “A sale, foreclosure, or seizure of property . . . shall not be valid if made **during**, or within one year after, the period of the servicemember’s military service . . .” 50 U.S.C. § 3953(c) (emphasis added). Because a sale, foreclosure, or seizure occurs at a particular time, Congress clearly intended this provision to apply to mortgage foreclosures occurring at any point during the course of the servicemember’s military service or the year thereafter. In several other sections of the SCRA, Congress also used “during” in a context clearly meaning at some point during a course of time. *See also* 50 U.S.C. § 3955(a)(4)(A) (servicemember may terminate a residential or motor vehicle lease if the servicemember “incurs a catastrophic injury or illness during a period of military service”); 50 U.S.C. § 3958(a)(1) (“A person holding a lien on the property or effects of a servicemember may not, during any period of military service . . . foreclose or enforce any lien on such property or effects without a court order”); 50 U.S.C. § 3931(g)(1) (“If a default judgment is entered in an action . . . against a servicemember during the servicemember’s period of military service . . ., the court . . . shall, upon application by or on behalf of the servicemember, reopen the judgment . . . ”); 50 U.S.C. § 3918(a) (“the waiver is

effective only if made pursuant to a written agreement of the parties that is executed during or after the servicemember's period of military service); 50 U.S.C. § 3953(b) ("In an action filed during, or within one year after, a servicemember's period of military service . . . the court may . . . (1) stay the proceedings for a period of time as justice and equity require, or (2) adjust the obligation to preserve the interests of all parties); 50 U.S.C. § 3916(b)(1) (servicemembers shall receive information about their SCRA rights "[d]uring the initial orientation training").

This interpretation is also consistent with the statutory purpose of Section 4025a and the SCRA as a whole. Courts have held that the SCRA should "be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." *Brewster v. Sun Trust Mortg., Inc.*, 742 F.3d 876, 878 (9th Cir. 2014), *citing Boone v. Lightner*, 319 U.S. 561, 575 (1943) (interpreting the Soldiers' and Sailors' Civil Relief Act (SSCRA), a predecessor statute to the SCRA); *see also Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948) (giving a broad construction to the SSCRA in light of its "beneficent purpose" and noting that "the Act must be read with an eye friendly to those who dropped their affairs to answer their country's call.").

Given the liberal construction that must be given to SCRA provisions, the Defendants' interpretation of Section 4025a(c)(2) is unreasonably narrow and would restrict license portability to military spouses who are able to maintain continuous employment in their field of

licensure.¹¹ Such a requirement would be extremely difficult for most military spouses to fulfill, especially given the unpredictable timing and frequency of military-ordered moves, which occur about once every two years.¹² Defendants' interpretation of Section 4025a(c)(2) would deny license portability to any spouse who has taken time off from their career for family or medical reasons and exclude spouses who choose to pursue part-time employment in their field. It would also deny license portability to military spouses who, like Plaintiff, are in the beginning stages of their professional careers. In short, Defendants' interpretation would make license portability impossible for many military spouses.¹³ Given the purpose and objectives of Section 4025a, it is reasonable to conclude that Section 4025a(c)(2) requires that the servicemember or spouse of a

¹¹ Since the SCRA was enacted in 2003, Congress has enacted numerous amendments expanding the rights and protections granted to military spouses. *See, e.g.*, Pub. L. No. 117-333 §17a, 136 Stat. 6121, 6163 (2023) (codified as amended at 50 U.S.C. § 3956) (expanding the right to terminate certain consumer contracts to dependents); Pub. L. No. 116-92 § 545, 133 Stat. 1198, 1377 (2019) (codified as amended at 50 U.S.C. § 4025) (giving spouses the right to terminate a residential lease in the event of the catastrophic illness or injury of the servicemember); Pub. L. No. 111-97, 123 Stat. 3007 (2009) (codified as amended at 50 U.S.C. §§ 4001, 4025) (guaranteeing residency of military spouses for purposes of voting and tax purposes); Pub. L. No. 108-454 §704, 118 Stat. 3598, 3624 (2004) (codified as amended at 50 U.S.C. § 3955) (providing that a servicemember's termination of a lease terminates any obligation a dependent has under the lease).

¹² A 2001 GAO report found that the average time between permanent change of station (PCS) moves was about two years. *See* U.S. General Accounting Office, Briefing Report to the Chairman and Ranking Minority Member, Subcommittee on Defense, Committee on Appropriations, U.S. Senate, "Military Personnel: Longer Time Between Moves Related to Higher Satisfaction and Retention," GAO -01-841, Aug. 2001, <https://www.gao.gov/assets/gao-01-841.pdf>.

¹³ Due to the unique demands of military life, military spouses often require more flexibility in employment than their civilian counterparts. *See, e.g.* Caitlin Dunham, *It Takes a Family: How Military Spousal Laws and Policies Impact National Security*, 11 *Journal of National Security Law & Policy* 291, 297 (2020), available at https://jnsllp.com/wp-content/uploads/2021/06/How-Military-Spousal-Laws-and-Policies-Impact-National-Security_2.pdf (noting that "laws and policies to create [employment] opportunities for military spouses will not be successful unless they account for the unpredictability that military spouses regularly have to experience.").

servicemember have actively used their license *at some point* during the two years immediately preceding their relocation due to military orders.¹⁴

B. The Public Interest Will Be Served by Enforcing the SCRA’s License Portability Provision

Enforcement of Section 4025a serves the public interest by reducing barriers to licensure and increasing employment opportunities for eligible servicemembers and military spouses.

When military spouses are able to find meaningful employment, it has a positive impact on the financial readiness of military families and makes it easier for the military to retain skilled and experienced servicemembers.¹⁵ It is well established that the public has an exceptionally strong interest in national defense and in ensuring military readiness. *See Winter v. NRDC*, 555 U.S. 7, 24 (2008); *Defense Distributed v. United States Dep't of State*, 838 F.3d 451, 458 (5th Cir. 2016); *see also Huntco Pawn Holdings v. United States DOD*, 240 F. Supp. 206, 238 (D.D.C. 2016) (holding that the “weighty public interest” in military readiness and protecting military families from financial hardship outweighed any harm to plaintiff).

Enforcement of Section 4025a also serves the public interest by increasing the pool of qualified and available applicants in critical career fields, including education. Recent news

¹⁴ Defendants argue – incorrectly - that the SCRA does not conflict with state law because Section 4025a imposes the same standard as 19 Texas Administrative Code Section 230.113(b), which requires an applicant to demonstrate two years of full-time, wage-earning experience. *See* Doc. 13 at 7-9. To the extent Defendants may argue that Plaintiff’s licenses should not be recognized because she has not met the requirements set forth in 19 Tex. Admin. Code § 230.113(b), that argument would also fail since any such requirements are preempted by Section 4025a. The Supremacy Clause of the U.S. Constitution provides that federal law is the “supreme Law of the Land.” U.S. CONST. art. VI, cl. 2. “The doctrine of federal preemption that arises out of the Supremacy Clause requires that “any state law, however clearly within a State’s acknowledged power, must yield if it interferes with or is contrary to federal law.” *Gade v. National Solid Wastes Management Ass’n*, 505 U.S. 88, 91(1992) (holding that federal laws and regulations preempted state licensing laws).

¹⁵ *See supra* Part III.

reports have observed that there is a nationwide shortage of school counselors and psychologists, even as the demand for school-based mental health services has risen.¹⁶ The public has an important interest in ensuring that students have adequate access to mental health services. *See Jaffee v. Redmond*, 518 U.S. 1, 11 (1996) (“The mental health of our citizenry, no less than its physical health, is a public good of transcendent importance”). Allowing military spouses to fill these critical positions will help ensure that our country’s needs are adequately met.

C. Plaintiff Has Standing to Bring This Action

Contrary to Defendants’ assertions, Plaintiff has standing to bring this action. The facts as alleged by Plaintiff and set forth in her affidavit clearly show how she was harmed by a violation of Section 4025a of the SCRA. Plaintiff has alleged and sworn that Defendants’ failure to recognize Plaintiff’s licenses as valid is preventing her from pursuing significant employment opportunities in her chosen profession at an early stage of her career. *See* Doc. 1 at ¶40; Doc. 5-1 at ¶4(1).

Plaintiff’s loss of employment opportunities constitutes a particularized injury-in-fact. Courts have recognized that the loss of opportunity to pursue one’s chosen profession or to find comparable employment can cause severe and lasting harm. *Burgess v. FDIC*, 871 F.3d 297, 304 (5th Cir. 2017); *see also Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) (holding that a decision that impeded a plaintiff’s “ability to procure comparable employment” constituted an irreparable injury); *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir.

¹⁶*See, e.g.*, Arianna Prothero & Maya Riser-Kositsky, “School Counselors and Psychologists Remain Scarce Even as Needs Rise,” *Education Week*, Mar. 1, 2022, <https://www.edweek.org/leadership/school-counselors-and-psychologists-remain-scarce-even-as-needs-rise/2022/03>; Patrick Wall et al., “School Psychologist, Counselor Hiring Lags Nationwide Even As Student Mental Health Needs Soar,” *Chalkbeat*, Nov. 18, 2022, <https://www.chalkbeat.org/2022/11/18/23465030/youth-mental-health-crisis-school-staff-psychologist-counselor-social-worker-shortage>.

2014) (“Setbacks early in their careers are likely to haunt Plaintiffs for the rest of their lives . . . Plaintiffs’ entire careers may be constrained by professional opportunities they are denied today.”). Moreover, Plaintiff’s injury is fairly traceable to the Defendants’ challenged conduct – their continuing failure to recognize her licenses as valid pursuant to Section 4025a.

Eliminating any doubt as to Plaintiff’s standing, Congress expressly provided a private right of action to “any person aggrieved by a violation” of the SCRA. 50 U.S.C. § 4042. Aggrieved persons may “obtain any appropriate equitable or declaratory relief with respect to the violation” and “recover all other appropriate relief, including monetary damages,” and the court may award aggrieved persons reasonable attorney fees and costs. *Id.*; see *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (noting that Congress’ “judgment” in providing a cause of action is “instructive and important” in evaluating whether a plaintiff has shown an injury-in-fact).

V. CONCLUSION

For the foregoing reasons, the United States respectfully submits this Statement of Interest in support of Plaintiff’s Motion for a Preliminary Injunction.

Dated: July 13, 2023

Respectfully Submitted,

JAIME ESPARZA
United States Attorney

KRISTEN CLARKE
Assistant Attorney General

CARRIE PAGNUCCO
Acting Chief

ELIZABETH A. SINGER
Director, U.S. Attorneys’
Fair Housing Program

/s/ James Dingivan
JAMES E. DINGIVAN
Assistant United States Attorney

/s/ Audrey Yap
AUDREY M. YAP
Trial Attorney

Texas Bar No. 24094139
United States Attorney's Office
Western District of Texas
601 N.W. Loop 410, Ste 600
San Antonio, TX 78216
Telephone: (210) 384-7372
Fax: (210) 384-7312
Email: james.dingivan@usdoj.gov

Hawaii Bar No. 9060
Civil Rights Division
U.S. Department of Justice
Housing and Civil Enforcement Section
4 Constitution Square
150 M Street, NE
Washington, D.C. 20530
Telephone: (202) 305-0015
Fax: (202) 514-1116
Email: audrey.yap@usdoj.gov

Attorneys for the United States of America