

UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT  
717 Madison Place, N.W.  
Washington D.C. 20439  
Phone: 202-275-8000

ANDREW U. D. STRAW,	)	Fed. Cir.#: 20-2090
<i>Appellant,</i>	)	U.S. CAVC Case#: 18-7129
v.	)	<u>Hon. Greenberg</u>
ROBERT WILKIE, SECRETARY	)	<u>Hon. Toth</u>
OF VETERANS AFFAIRS,	)	<u>Hon. Falvey</u>
<i>Appellee.</i>	)	Presiding Judges

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**AMENDED MOTION FOR RECONSIDERATION AND**  
**RECONSIDERATION *EN BANC***

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I, *appellee* Andrew U. D. Straw, having read the panel ORDER at **Dkt. 33** move for both reconsideration *en banc* and reconsideration, and thus state in support:

This document is meant to replace any other motion seeking reconsideration either by the panel or en banc. My efilng has been established and I prefer to file this way under CM/ECF.

**Issues to be raised on reconsideration due to plain legal error:**

1. **RESIDENCE VERSUS DOMICILE**. The VA and the Courts below are treating residence as meaning the same thing as domicile. My parents were at these military bases *involuntarily* because my dad was training for Vietnam and he had no choice.

2. I had no choice where I was born. My parents maintained a domicile in Indiana because that was their permanent home and when my dad got out of the service, like most servicemembers, we returned to my parents' pre-service domicile: Elkhart, Indiana. However, their Indiana domicile did not affect where *my* first residence and domicile were.
3. The Fourteenth Amendment, Section 1, of the U.S. Constitution gave me residence and citizenship **where I was born** and that was Camp LeJeune Naval Hospital, North Carolina. It is on my birth certificate, and here is the relevant excerpt:

NAME OF CHILD		FIRST	MIDDLE	LAST
1. ANDREW		"U"	"D"	STRAW
THIS BIRTH—SINGLE, TWIN, TRIPLE, ETC. (SPECIFY)		IF NOT SINGLE BIRTH—BORN FIRST, SECOND, THIRD, ETC. (SPECIFY)		DATE OF BIRTH
3a. SINGLE		3b.		4a. MARCH 19, 1969
PLACE OF BIRTH		USUAL RESIDENCE OF MOTHER		
COUNTRY		STATE		
5a. ONSLOW		6a. NORTH CAROLINA		
CITY OR TOWN		CITY OR TOWN		
5b. CAMP LEJEUNE		6c. JACKSONVILLE		
NAME OF HOSPITAL (IF NOT IN HOSPITAL, GIVE STREET AND NUMBER)		INSIDE CITY LIMITS (SPECIFY YES OR NO)		STREET ADDRESS OR R.F.D. NO.
5c. NAVAL HOSPITAL		5d. NO		6d. 1243 DAVIS STREET

4. Again, as the panel here noted, I was born on 3/19/1969 and my initial residence *and* domicile were Camp LeJeune Naval Hospital by action of the 14<sup>th</sup> Amendment. I had no other residence before

that except my mother's womb, which for 4 months came onto the base and **I was poisoned not knowing where that womb was traveling and carrying me.** That womb entered and used Camp LeJeune swimming pool, full of toxins. Imagine *swimming* in the toxins. My father deposed to this below and his words are not disputed.

5. My first domicile was in the hospital that was in fact contaminated with some of the worst toxins known to man just like the rest of the base.
6. Even while in the hospital, my mother's domicile remained **Elkhart, Indiana.** But I never had that domicile at that time, was never present in Indiana until after my father left for Vietnam in 1970.
7. The word residence is vague in the statute and *not defined.* If Congress meant live on the base *in base housing*, it would have said so and it would have used the word *domicile.* It would have said one must have a domicile there for 30 days as a legal matter. But the Marines and their spouses did not have domiciles at Camp

LeJeune, not a single one of them, including the spouses who lived in base housing. It was a temporary association as Marines trained and left for Vietnam, like my dad.

8. Domicile: [https://blacks\\_law.enacademic.com/26548/domicile](https://blacks_law.enacademic.com/26548/domicile)
9. My first domicile was the Camp LeJeune Naval Hospital and I know this because *I kept returning there* until I established a different domicile in Indiana. My medical records show this: I kept returning to the base hospital. How could I have a domicile in Jacksonville when my parents did not?
10. We may as well have been living in a hotel and spending our time each day for a year getting poisoned on the base. **A poisoning vacation.** There was zero intention to remain in Jacksonville after my father left the service.
11. And how could I have a domicile in Indiana when I was a citizen of North Carolina by birth and action of the 14<sup>th</sup> Amendment?

12. Residence, the word used by Congress, has a broader meaning than domicile and you don't have to contort your thinking in order to see that others distinguish between domicile and residence. Was Congress sloppy in using the more general term, residence? I think not. I think residence is much easier to meet than domicile and I was a resident for 30 days for the reasons I have given and a had a domicile at Camp LeJeune at the same time.

13. <https://palmcitylawyer.com/blog/do-you-know-the-difference-between-a-domicile-and-a-residence/>

14. “An individual may have *several residences* whereas; s/he will have only **one domicile**. Domicile is more used in reference to **personal rights, duties and obligations \* \* \***”  
<https://domicile.uslegal.com/distinctions-between-domicile-and-residence/>

15. My domicile was Camp LeJeune Naval Hospital when I left the hospital and continued to be my domicile due to frequent returns to that hospital until Indiana became my domicile much

later, in 1970, when my dad left for Vietnam and my mom lived with her parents in Elkhart.

16. In other words, you don't have to physically have a home where you have a residence, since one can have more than one residence. But in fact, I had *more than a residence*. I had a *birthplace* at the Superfund site. I had *official demands by the US Navy* that I be present on that base.

17. They asked me. I didn't ask them. I had no choice when they forced me there for over 30 days.

18. You poison me, you pay. You poison me and kill my mom, then you must provide health care to me for my brain damage.

This is so basic in being a human being, it cannot be questioned as a matter either of human rights or statutory construction here. It is the reason for the U.S. Supreme Court precedent that decides this case: *Tcherepnin v. Knight*, [389 U.S. 332](#) (1967). The panel ignored this precedent when it is supposed to adhere to and obey Supreme Court precedents.

19. Why did the panel ignore this precedent? It did not cite to this case even long enough to distinguish it. There is [no citation to this U.S. Supreme Court precedent](#) that should have mandated the outcome in my favor. It requires liberal construction and that is not what happened here.

20. In fact, I was a resident at Camp LeJeune and the U.S. Constitution, Amendment XIV, made that so on the first day of my life. I was a citizen of the USA and a citizen of North Carolina because of the base where I was born. This citizenship must include the place. This made my domicile Camp LeJeune Naval Hospital until my parents took me to their domicile in Indiana over 9 months later.

21. That is far more than 30 days. I kept returning and this just confirmed that Camp LeJeune Naval Hospital was my domicile and residence, even between visits. I went there many times before I ever moved to Indiana. Even the State Department understands that my birthplace is North Carolina and puts it on my passport:



22. It should say Camp LeJeune, North Carolina, because I was not born in Jacksonville, but at Camp LeJeune Naval Hospital.

23. I was clearly under the jurisdiction of the U.S. Navy and USMC with respect to my health care until my domicile changed in 1970 and I started having private doctors. I received no education, no health care, nothing from Jacksonville, only services of the U.S. Marine Corps and the U.S. Navy at Camp LeJeune.

24. My lengthy medical record in the record below shows that I was under the *power and jurisdiction of the military*. I was not a Tarheel, but a Marine brat, and I ask you to keep that distinction in mind as you consider my dead mother and my bipolar, far more



likely than not caused by this base where I was born because they are ailments on the VA list: [38 CFR §§ 17.400\(b\)\(iii & xiv\)](#).

25. It should also be crystal clear that this law covers my father's workplace at **MCAS New River** because this regulation makes it part of Camp LeJeune for legal purposes. [38 CFR § 17.400\(b\)](#): "Camp Lejeune means any area within the borders of the U.S. Marine Corps Base Camp Lejeune or **Marine Corps Air Station New River, North Carolina.**"

26. Your affirmance turns me into a resident of Jacksonville when my connections have very little to do with Jacksonville and everything to do with Camp LeJeune and MCAS New River, where my father worked and where I repeatedly came to be poisoned without my family's knowledge or consent.

27. DO NOT withhold this justice from me because in doing so, you are not only punishing me for *nothing that I did* as an infant, you are *rewarding tortfeasors* who hurt me my entire life, including killing my mother while I was in law school, 1997.

28. Do not march in the tortfeasors' and criminals' number but walk with me because my suffering will go on for a while before I die and I should have this ***honor and respect*** that you withheld the first time around. Reconsider, please. My heart is actually broken, with abnormal EKGs every time to I go the hospital and get it checked. My heart is also broken and hurts when powerful judges use their office to deny me.

29. The panel breaks my heart even more. It is hard to bear.

30. Judges are paid that large judge salary by the same government that poisoned and injured me. There is a fundamental conflict and because of this, every consideration should blow in my favor when the government judges itself.

31. **CONSTITUTIONAL VIOLATIONS.** My Equal Protection argument was not that I was in a different class treated differently but that I was in **the same class** as those getting the insurance benefit the last 7 years and **wrongly treated as though I was different when I am not different.**

32. That is the source of the irrationality.

33. In other words, I am like every other USMC baby who was poisoned when born at that base hospital, which is in the midst of an [EPA Superfund site](#) of monumental proportions, [the worst water poisoning disaster in US history](#). I continued to have base access for over a year under the power of the base commander and that made me like everyone else on the base. That commander told my mother to bring me on that base. How is that different from being forced to live there or work there? It is ***not*** different. Residents of Jacksonville were not under the commander's power and that shows just part of the reason what I was not a resident of Jacksonville, but instead Camp LeJeune Naval Hospital.

34. The Court did not mention that my father was only there for work as a Marine training for Vietnam and he did not sleep on base and **he is eligible**. But I his son and infant, equally given access to the base for 13 months, am **not eligible**.

35. IRRATIONAL. UNEQUAL. UNCONSTITUTIONAL.

36. My father and I slept in the same place and had access just the same! Congress cannot draw this irrational distinction

between my father and myself and the Court must not countenance it. No one doubts my having bipolar disorder since my doctors' statements prove it and the government admits bipolar should be covered under this law and this *is*, per my pleadings here, one of the covered conditions, not disputed. 38 C.F.R. § 17.400(b)(xiv).

37. Veterans can get coverage without sleeping on base:

Camp Lejeune veteran means any veteran who served at Camp Lejeune on active duty, as defined in 38 U.S.C. 101(21), in the Armed Forces for at least 30 (consecutive or nonconsecutive) days during the period beginning on August 1, 1953, and ending on December 31, 1987. A veteran served at Camp Lejeune if he or she was stationed at Camp Lejeune, or traveled to Camp Lejeune as part of his or her professional duties. 38 C.F.R. § 17.400(b)

38. It is also very sad that this Court, like the ones below, did not even mention that my mother died of a breast cancer listed by this law. 38 C.F.R. § 17.400(b)(iii). That death fact alone should have guaranteed my prevailing here. Respect and honor are lacking.

39. I list these facts on my disability webpage:

40. <http://disability.andrewstraw.com>

41. **STATUTORY CONSTRUCTION ERROR.** CAVC Court said that the definition of residence was **not provided by Congress**. I provided a reasonable definition that matches the language and purpose in 38 U.S.C. § 1787 (**the title**) and the Court below and the panel here chose to **ignore the clear language of the title** and imported a definition chosen to defeat me by the judges here and below. This violated *Tcherepnin v. Knight*.

42. Judges are not legislators. They don't get to change or avoid the purpose of the law using a dictionary, blindly ignoring everything else. The language of the title has meaning and impact and it supports me, not this fiction that I am not eligible. I will quote the title and explain its meaning again. [38 U.S.C. § 1787](#):

**“Health care of family members of veterans stationed at  
Camp Lejeune, North Carolina”**

43. Parsed properly, this means:

44. This is for health care. This is for family members of veterans to have health care. The veterans are those who were stationed at Camp LeJeune, North Carolina.
45. There is no controversy that this is about health care coverage.
46. There is controversy about whether I am a family member of a veteran, but this is not a real dispute, since my father served in the US Marine Corps from 1967 to 1971 and served in Vietnam.
47. Further, my father was stationed at Camp LeJeune and nobody denies this now that MCAS New River is considered by law to be [part of Camp LeJeune](#).
48. Note that there is no reference in the title to an exclusion of *some* of these covered family members based on “residence.”
49. My facts match the title. Child of a relevant veteran who was stationed at Camp LeJeune for **13 months**, **not 30 days**.
50. The panel here had an obligation to liberally construe this Act to cover me since **I was born there** and got an illness 52 years

ago covered by the Act that I still suffer today. *Tcherepnin v. Knight* should have disposed of this in my favor easily and every day of access to those poisons should have represented a day of residence so that I can be covered by this last-payer health care.

51. I am not getting anything else for my poisoning. No compensation has been provided for this violation of my humanity.

52. We were not talking about domicile, which is not the same as residence. One can have more than one residence but my domicile ***and*** residence were ***both*** the Camp LeJeune Naval Hospital.

53. FYI. I have [brain damage from bipolar](#) that causes my moods to be injured and I experience physical and mental strain and pain from your ORDER. The panel stresses me, vexes me, disturbs my sleep, and exacerbates my bipolar and anxiety symptoms caused by the U.S. Marine Corps when I resided and/or had a domicile at Camp LeJeune.

54. The panel participates in my pain by denying me.

55. The Court needs to know that the very illness caused by Camp LeJeune causes me to experience pain when I am rejected for this insurance and not given health care signed by President Obama specifically for people like me. Please stop hurting me and give me my due. My HHA has been waiting for 2.5 years.

56. The panel added insult to injury, just like the judges below at CAVC, BVA, and the VA did. It's wrong. Stop doing it.

57. I have no choice, given the legal and physical injury the panel's ORDER does to me, to petition the U.S. Supreme Court for a writ of certiorari even though there is virtually no chance I will be granted this. Congress messed up access to the Supreme Court in 1925. This Court will make me waste more time and resources, more psychic energy, because the Court would not give me what is right and proper and legal.

58. 1 day of access to the poisons is one day of residence. Period.

59. Even talking about where I slept is specious and irrelevant. If someone ran over me with a Hummer at "place A," a Court would not inquire where I slept at night or how much pizza I ate.



60. The tort happened where it happened and irrelevant facts should be tossed aside. I was poisoned at Camp LeJeune when I was born there during the poisoning time that everyone recognizes. That's all that the law should require and common law would treat this matter that way as a tort. This Court should narrowly construe any limitation once you know someone was born there during that time and has one of the listed ailments.

61. Why does this Court exclude me with respect to poisoning, **a crime** that was committed to me and my family? UCMJ makes this a crime. Maiming an infant is a crime in the U. S. Marine Corps. [Article 124](#). And in my case, poisoning me *in utero* is another crime. [Article 119a](#). The Court must see that depriving me is a false result using irrelevant facts and letting the criminals' injuries to me follow me to my grave as a victim with no relief.

62. That is not law.

63. A Court should not suborn or defend crimes or deprive crime victims of restitution in whatever form, including this health care to treat the illnesses **caused by the crimes**.

64. The law is being stretched to oppose me and I am offended by it every time it happens. Give me my insurance that I am owed as a crime victim of officers of the Marine Corps and Navy! I am sick with mental illness and everyone knows the cause.

65. This is not welfare, but **restitution and protection** after the military criminally injured me and my family.  
<http://crime.andrewstraw.com>

66. Death and disability and suffering caused by the USMC and US Navy to my family demand that I be covered. Few would be as patient as me as a victim after *7 years of denials* from this disappointing system of review.

WHEREFORE, I move for reconsideration *en banc* and by the panel.

I, Andrew U. D. Straw, verify that my statements above are true and correct on penalty of perjury under the laws of the United States.

Signed this 21<sup>st</sup> Day of January, 2021



s/ ANDREW U. D. STRAW, *Plaintiff-Appellant*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I filed the foregoing:

**AMENDED MOTION**

with the Court via CM/ECF and it will be served to all counsel appearing in this case.

Dated this 21<sup>st</sup> Day of January, 2021



s/ ANDREW U. D. STRAW

Andrew U. D. Straw, a member of the bar of the  
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