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**VIA ECF FILING AND OVERNIGHT MAIL**

August 24, 2011

Ms. Molly C. Dwyer  
Clerk  
United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103-1526

Re: *Log Cabin Republicans v. United States of America et al.*  
Nos. 10-56634, 10-56813  
**Set for Oral Argument: September 1, 2011, Pasadena  
Before Alarcon, O’Scannlain, and Silverman, CJJ**

Dear Ms. Dwyer:

Appellee/cross-appellant Log Cabin Republicans (“Log Cabin”) submits this letter pursuant to Federal Rule of Appellate Procedure 28(j) and Ninth Circuit Rule 30-1.8 to supplement the record to include three Certificates of Release or Discharge From Active Duty (Form DD-214) pertaining to witnesses who testified at the trial of this matter. Each of those Certificates of Release bears a Re-entry Code (Box 27) either stating “NOT APPLICABLE” or designating the individual as ineligible for re-enlistment. Each of the Certificates of Release was admitted in evidence at trial with the indicated exhibit number.

The attachments to this letter are as follows:

A: DD-214 of Army PV2 John Alexander Nicholson III (Trial Ex. 110A),  
showing re-entry code **4**;

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- B: DD-214 of Air Force Maj Michael David Almy (Trial Ex. 112), showing re-entry code **NOT APPLICABLE**;
- C: DD-214 of Air Force Ssgt Anthony John Loverde (Trial Ex. 134), showing re-entry code **2C**;
- D: U.S. Army and Air Force re-entry eligibility codes, in Army Regulation 601-210, available at [http://www.apd.army.mil/pdf/files/r601\\_210.pdf](http://www.apd.army.mil/pdf/files/r601_210.pdf), retrieved August 23, 2011. Log Cabin requests that the Court take judicial notice of Attachment D, pursuant to Federal Rule of Evidence 201.

Attachment D interprets Army re-entry code 4 as “nonwaivable disqualification” and “Ineligible for enlistment,” and Air Force re-entry code 2C as “Not eligible for enlistment unless waiver is granted.”

These documents were not included in Log Cabin’s Supplemental Excerpts of Record filed with its answering brief because they pertain to the issue of mootness raised in this Court’s July 11, 2011 Order directing the parties to show cause why this case should not be dismissed as moot.

The DD-214 forms show the ongoing collateral consequences of discharges under 10 U.S.C. § 654 to former servicemembers Nicholson, Almy, and Loverde, specifically that those discharges have rendered them ineligible to re-enlist. Those collateral consequences persist notwithstanding the repeal of 10 U.S.C. § 654 effective September 20, 2011.

Respectfully submitted,

WHITE & CASE LLP

By: /s/ Dan Woods  
Dan Woods

Ms. Molly C. Dwyer

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cc: Henry C. Whitaker, Esq. (via ECF and overnight mail)  
All ECF participants

L5 G

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THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

### CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) NICHOLSON, JOHN ALEXANDER III		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA		3. SOCIAL SECURITY NO.	
--	--	--	--	------------------------	--

4. a. GRADE, RATE, OR RANK PV2		4. b. PAY GRADE E2		5. DATE OF BIRTH (YYYYMMDD)		6. RESERVE OBLIG. TERM. DATE Year 0000 Month 00 Day 00	
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7. a. PLACE OF ENTRY INTO ACTIVE DUTY CHARLOTTE MEPS, NC				7. b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)			
---	--	--	--	--	--	--	--

8. a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND W1E8 USAICFH CO E (ST) 309TH TC				8. b. STATION WHERE SEPARATED FORT HUACHUCA, AZ 85613-6000			
---	--	--	--	---	--	--	--

9. COMMAND TO WHICH TRANSFERRED NA				10. SGLI COVERAGE <input type="checkbox"/> None Amount: \$ 250,000.00			
---------------------------------------	--	--	--	--	--	--	--

11. PRIMARY SPECIALTY (List number, title and years and months in specialty, List additional specialty numbers and titles involving periods of one or more years.) NONE//NOTHING FOLLOWS	12. RECORD OF SERVICE			
	a. Date entered AD This Period	2001	06	21
	b. Separation Date This Period	2002	03	23
	c. Net Active Service This Period	0000	09	02
	d. Total Prior Active Service	0000	00	00
	e. Total Prior Inactive Service	0000	00	00
	f. Foreign Service	0000	00	00
	g. Sea Service	0000	00	00
	h. Effective Date of Pay Grade	2001	06	23

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)  
NONE//NOTHING FOLLOWS

14. MILITARY EDUCATION (Course title, number of weeks and month and year completed)  
NONE//NOTHING FOLLOWS

15. a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERAN'S EDUCATIONAL ASSISTANCE PROGRAM	Yes	No	15. b. HIGH SCHOOL GRADUATE OR EQUIVALENT	Yes	No	16. DAYS ACCRUED LEAVE PAID
		X		X		9.0

17. MEMBER WAS PROVIDED A COMPLETE DENTAL EXAM AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION  Yes  No

18. REMARKS  
DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS//BLOCK 6, PERIOD OF DELAYED ENTRY PROGRAM: 20010611-20010620//MEMBER HAS NOT COMPLETED FIRST FULL TERM OF SERVICE //NOTHING FOLLOWS

19. a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code)	19. b. NEAREST RELATIVE (Name and address - include Zip Code)
	JOHN A NICHOLSON JR

20. MEMBER REQUESTS COPY 6 BE SENT TO: NC DIR OF VET AFFAIRS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) T R HARTMAN, GS09, CHIEF TRANS SERVICES
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SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION DISCHARGE	24. CHARACTER OF SERVICE (Include upgrades) HONORABLE		
25. SEPARATION AUTHORITY AR 635-200, PARA 15.3B	26. SEPARATION CODE JRB	27. REENTRY CODE 4	
28. NARRATIVE REASON FOR SEPARATION HOMOSEXUAL ADMISION			
29. DATES OF TIME LOST DURING THIS PERIOD NONE			30. MEMBER REQUESTS COPY 4 Initials

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

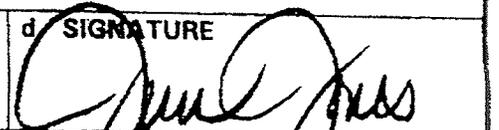
ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

**CORRECTION TO DD FORM 214,  
CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY**

1. NAME (Last, First, Middle) <b>NICHOLSON, JOHN ALEXANDER</b>	2. DEPARTMENT, COMPONENT AND BRANCH <b>ARMY/RA</b>	3. SOCIAL SECURITY NUMBER <i>(Also, Service Number if applicable)</i>
4. MAILING ADDRESS (Include ZIP Code)		

5. ORIGINAL DD FORM 214 IS CORRECTED AS INDICATED BELOW:

ITEM NO.	CORRECTED TO READ
7B	SEPARATION DATE ON DD FORM 214 BEING CORRECTED: <u>2002 03 22</u>  <b>//NOTHING FOLLOWS//</b>

6. DATE <i>(YYYYMMDD)</i> <b>20030529</b>	7. OFFICIAL AUTHORIZED TO SIGN			
	a. TYPED NAME (Last, First, Middle Initial) <b>JERRI JONES</b>	b. GRADE <b>GS7</b>	c. TITLE <b>HR ASSISTANT (MIL)</b>	d. SIGNATURE 

DD FORM 215, FEB 2000

PREVIOUS EDITION IS OBSOLETE.

SERVICE - 2

LCR000019

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ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) ALMY, MICHAEL DAVID		2. DEPARTMENT, COMPONENT AND BRANCH AIR FORCE -- REG AF		3. SOCIAL SECURITY NUMBER	
4a. GRADE, RATE OR RANK MAJ	b. PAY GRADE O4	5. DATE OF BIRTH (YYYYMMDD)		6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) N/A	
7a. PLACE OF ENTRY INTO ACTIVE DUTY DAYTON OH			b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)		

8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 606 ACS (AFE)	b. STATION WHERE SEPARATED SPANGDAHLEM AB GERMANY
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9. COMMAND TO WHICH TRANSFERRED NOT APPLICABLE	10. SGLI COVERAGE AMOUNT \$400,000 NONE
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11. PRIMARY SPECIALTY (Last number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 3883 - Communications and Information 13 years 1 month	12. RECORD OF SERVICE		
	a. DATE ENTERED AD THIS PERIOD	1988	Jun 20
	b. SEPARATION DATE THIS PERIOD	2006	Jul 21
	c. NET ACTIVE SERVICE THIS PERIOD	18	01 02
	d. TOTAL PRIOR ACTIVE SERVICE	00	00 00
	e. TOTAL PRIOR INACTIVE SERVICE	00	07 20
	f. FOREIGN SERVICE	04	03 01
	g. SEA SERVICE	00	00 00
h. EFFECTIVE DATE OF PAY GRADE	2003	Jul 01	

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) Air Force (AF) Achievement Medal; AF Commendation Medal, 2 oak leaf clusters (olc); Joint Service Commendation Medal; Small Arms Expert Marksmanship -- SEE REMARKS --	14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) Quality Assurance Eval, Base Level, 2 weeks, Mar 96; Air Command & Staff College, 32 weeks, 2004; Squadron Officer School, 8 weeks, -- SEE REMARKS --
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15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
b. HIGH SCHOOL GRADUATE OR EQUIVALENT	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

16. DAYS ACCRUED LEAVE PAID 44.5	17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO
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18. REMARKS:  
ITEM 13: Ribbon/Pistol; Humanitarian Service Medal; AF Training Ribbon; AF Longevity Service Award, 1 olc; Combat Readiness Medal, 1 olc; Armed Forces Expeditionary Medal; National Defense Service Medal, 1 service star; AF Outstanding Unit Award, 2 olc; AF Organizational Excellence Award; Global War on Terrorism Service Medal; Global War on Terrorism Expeditionary Medal; Iraq Campaign Medal; AF Overseas Long Tour Ribbon; Senior Communications and Information Badge. ITEM 14: 1999; USMC Command & Control School, 40 weeks, Jun 04; Datalinks Training, 3 weeks, Aug 02; Basic Communications Training, 20 weeks, -- SEE CONTINUATION SHEET --  
The information contained herein is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and of continued compliance with, the requirements of a Federal benefit program.

19a. MAILING ADDRESS AFTER SEPARATION (include Zip Code)	b. NEAREST RELATIVE (Name and address - include Zip Code) COLONEL (RET) DAVID B ALMY
--	---

20. MEMBER REQUESTS COPY 5 BE SENT TO OH DIRECTOR OF VETERANS AFFAIRS	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
---	---	-----------------------------

21. SIGNATURE OF MEMBER BEING SEPARATED MEMBER REFUSED TO SIGN	22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) BRIAN C. COOK, TSgt, USAF NCOIC, RELOCATIONS
---	---

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION DISCHARGE	24. CHARACTER OF SERVICE (include upgrades) HONORABLE	
25. SEPARATION AUTHORITY AFI 36-3207	26. SEPARATION CODE GRB	27. REENTRY CODE NOT APPLICABLE
28. NARRATIVE REASON FOR SEPARATION HOMOSEXUAL ADMISSION		
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) NONE		30. MEMBER REQUESTS COPY 4 (initials)

**CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY**

1. NAME (Last, First, Middle) **LOVERDE, ANTHONY JOHN** 2. DEPARTMENT, COMPONENT AND BRANCH **AIR FORCE-RECAF** 3. SOCIAL SECURITY NUMBER [REDACTED]

4a. GRADE, RATE OR RANK **SSGT** 4b. PAY GRADE **E5** 5. DATE OF BIRTH (YYYYMMDD) [REDACTED] 6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) N/A

7a. PLACE OF ENTRY INTO ACTIVE DUTY **SACRAMENTO CA** 7b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)

8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND **31 AFB, FT SQ (AFB)** 8b. STATION WHERE SEPARATED **RANDOLPH AFB TX**

9. COMMAND TO WHICH TRANSFERRED **N/A** 10. SOLI COVERAGE  NONE AMOUNT: \$400,000

11. PRIMARY SPECIALTY (job number, title and years and months in specialty. List additional specialty numbers and their matching periods of year or more years.)	12. RECORD OF SERVICE	YEARS	MONTHS	DAYS
1A251. AIRCRAFT LOADMASTER JOURNEYMAN, 1 YEAR, 3P001, PRECISION MEASUREMENT EQUIPT LAB CRAFTSMAN, 6 YEARS AND 5 MONTHS	a. DATE ENTERED AD THIS PERIOD	2001	FEB	13
	b. SEPARATION DATE THIS PERIOD	2008	JUL	13
	c. NET ACTIVE SERVICE THIS PERIOD	07	00	01
	d. TOTAL PRIOR ACTIVE SERVICE	00	00	00
	e. TOTAL PRIOR INACTIVE SERVICE	00	01	23
	f. FOREIGN SERVICE	00	00	18
	g. SEA SERVICE	00	00	00
	h. EFFECTIVE DATE OF PAY GRADE	2004	AUG	01

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)  
 Air Medal, Air Force Commendation Medal, AF Outstanding Unit Award with 3 oak leaf overlays, AF Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, AF Overseas Ribbon Long, Air Force Exemplary Service Ribbon with Gold Border, AF Longevity Service (SEE REMARKS)

14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed)  
 AIRMAN LEADERSHIP SCHOOL, JUN 2004. (LJO) LOADMASTER INITIAL/MISSION QUALIFICATION, JUN 2007. (NOE) BASIC LOADMASTER, JAN 2007. (ERR) BASIC SURVIVAL TRAINING COURSE, DEC 2006. (VED) WATER SURVIVAL SCHOOL, NOV 2008. (RMS) ENLISTED AIRCREW UNDERGRADUATE COURSE, NOV 2008

15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM  YES  NO  
 b. HIGH SCHOOL GRADUATE OR EQUIVALENT  YES  NO

16. DAYS ACCRUED LEAVE PAID **0** 17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION  YES  NO

18. REMARKS  
 ITEM 13: USAF NCO PME Graduate Ribbon, Small Arms Expert Marksmanship Ribbon with 1 service star, AF Training Ribbon. ITEM 14: (SSFC) PRECISION MEASUREMENT EQUIPMENT LAB CRAFTSMAN, DEC 2004. (JER) PRECISION MEASUREMENT EQUIPMENT LABORATORY APPRENTICE, NOV 2001. (POT) ELECTRONIC PRINCIPLES, JUN 2001. BASIC MILITARY TRAINING, APR 2001. Member has completed first full term of service. Copy 2 to DVA Data Processing Center, Austin TX 78702 and copy 3 to Lockheed Martin Information Technology, U.S. Department of Labor, Federal Claims Control Center, P.O. Box 788270, Orlando, FL 32878-8270.  
 NOTHING FOLLOWS

The information contained herein is subject to computer matching with the Department of Defense or with any other affected Federal or non-Federal agency for certification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.

19a. MAILING ADDRESS AFTER SEPARATION (include ZIP Code) [REDACTED] 19b. NEAREST RELATIVE (Name and address - include ZIP Code) **BETTY STIVNO**

20. MEMBER REQUESTS COPY 4 BE SENT TO CA DIRECTOR OF VETERANS AFFAIRS  YES  NO

21. SIGNATURE OF MEMBER BEING SEPARATED  
 MEMBER NOT AVAILABLE TO SIGN  
 22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature)  
**BRIAN CYR, TSgt, USAF**  
 NCOIC, Ret & Sep After Action Documentation Sects

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION **DISCHARGED** 24. CHARACTER OF SERVICE (include applicable)  
**HONORABLE**

25. SEPARATION AUTHORITY **AFI 36-3206** 26. SEPARATION CODE **HRS** 27. REENTRY CODE **2C**

28. NARRATIVE REASON FOR SEPARATION **HOMOSEXUAL CONDUCT (STATEMENT)**

29. DATES OF TIME LOST DURING THIS PERIOD **NONE** 30. MEMBER REQUESTS COPY 4 (Amount) **N/A**

**Army Regulation 601–210**

**Personnel Procurement**

# **Active and Reserve Components Enlistment Program**

**Headquarters  
Department of the Army  
Washington, DC  
8 February 2011**

**UNCLASSIFIED**

of ETS, may reenlist immediately with concurrent reassignment to a unit of the Selected Reserve (see AR 140–111, chap 7).

### 3–21. U.S. Army reentry eligibility codes

Verification of PS RE codes will be requested from agencies listed in paragraph 3–20. The following RE codes (see tables 3–1 through 3–4) are used for administrative purposes only. Applicants should be advised that these codes are not to be considered derogatory in nature; they simply are codes used for identification of an enlistment processing procedure.

**Table 3–1**  
**U.S. Army reentry eligibility codes**

Code	Definition
RE–1	Applies to: Person completing their term of active Service who is considered qualified to reenter the U.S. Army Eligibility: Qualified for enlistment if all other criteria are met.
RE–3	Applies to: Person who is not considered fully qualified for reentry or continuous Service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.
RE–4	Applies to: Person separated from last period of Service with a nonwaivable disqualification. This includes anyone with a Department of the Army imposed bar to reenlistment in effect at time of separation, or separated for any reason (except length of Service retirement) with 18 or more years AFS. Eligibility: Ineligible for enlistment.
RE–4R	Applies to: A person who retired for length of Service with 15 or more years AFS. Eligibility: Ineligible for enlistment.
RE 1A, 1B, 1C, 2, 2B, 2C, and 4A	Applies to: Soldier separated prior to the effective date of this regulation. These codes will not be used. Eligibility: Qualified for enlistment, provided reason and authority does not preclude enlistment or require a waiver. Applicant may not enlist until 93 days after separation if otherwise qualified.
RE 2A, 3A, 3B, 3C, 3D, 3E, 3S, and 3V	Applies to: Soldiers separated prior to the effective date of this regulation but did not meet reentry criteria at time of separation. Eligibility: Ineligible unless a waiver is granted.

**Table 3–2**  
**U.S. Navy and U.S. Coast Guard reentry eligibility codes**

Code	Definition
RE–1, 1E, 1R, 3J, 3M, 3X, 5, 6, and 7	Applies to: Eligible for reenlistment. Eligible: Qualified if all other applicable criteria are met.
RE–3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3K, 3L, 3N, 3P, 3Q, 3R, 3S, 3T, 3U, and 3Y	Applies to: Persons separated with disqualifications for retention. Eligibility: Not eligible for enlistment unless a waiver is granted.
RE –3A, 3B, 3R, 3T, 3U, 3Y, and 3Z	Applies to: Persons separated with disqualifications for retention. Eligibility: For AR fully eligible for enlistment.
RE–2, 3V and 4	Applies to: Ineligible for reenlistment. Eligibility: Not eligible for enlistment.

**Table 3-3**  
**U.S. Air Force reentry eligibility codes**

Code	Definition
RE-1, 1J, 1R, 1T, 2I, 3A, 3I, and 3J	Applies to: Eligible to reenlist. Eligibility: Qualified if all other applicable criteria are met.
RE-1A, 1K, 1M, 1P, 2A, 2C, 2D, 2E, 2F, 2J, 2K, 2L, 2M, 2N, 2P, 2T, 2U, 2X, 2Y, 3B, 3C, 3D, 3E, 3K, 4, 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K, 4L, 4M, and 4N	Applies to: Ineligible to reenlist without waiver. Eligibility: Not eligible for enlistment unless waiver is granted.
RE-2, 2B, 2G, 2H, 2Q, 2R, 2S, and 2W	Applies to: Not eligible to reenlist. Eligibility: Not eligible for enlistment.

**Table 3-4**  
**U.S. Marine Corps reentry eligibility codes**

Code	Definition
R-1, 1A, 2A, 3A, and 3U	Applies to: Eligible to reenlist. Eligibility: Qualified to enlist provided all other criteria are met.
RE-1B, 1C, 2C, , 3C, 3D, 3E, 3F, 3H, 3J, 3N, 3O, 3P, 3R, 3S, 3T, 3V, and 3W	Applies to: Personnel separated with disqualifications. Eligibility: Not eligible unless a waiver is granted.
RE-2, 2B, and 4B	Applies to: Not eligible to reenlistment. Eligibility: Not qualified for enlistment.

### 3-22. Reentry codes and separation program designator, any component

The PS personnel who were released early to attend school or received SSB/VSI separation pay and received an SPD code of KCB, KCF, MCA, MCB, MCF, or KCA may enlist without RE code waiver. Personnel who enlisted in the AR who never shipped to IADT that subsequently were discharged for being an unsatisfactory participant may enlist without a waiver.

### 3-23. Determination of enlistment/assignment eligibility

*a.* The RA enlistment eligibility will be based on last discharge or separation. If the last period of Service was in RC (excluding IRR) qualification will be based on that separation/discharge.

*b.* The RC enlistment eligibility of a person who does not meet requirements shown in paragraph 3-23*b*, or whose last period of military Service ended with a discharge from an AD status, must be determined before the enlistment agreement is completed. If the person was discharged from AD status, the RE code, and SPD will be obtained. If last period of Service was in RC (excluding IRR) qualification will be based on that separation/discharge. If an individual's last period of Service was in the IRR or discharged from the IRR, then they will require the same processing procedures as a prior Service who was discharged and required a waiver. However, if the applicant is currently in a TPU or member of ARNG for 6 months or more, or served in a TPU or ARNG after discharge from a regular component, no waiver is required. If an applicant has been in the TPU or ARNG less than 6 months, a waiver is required. Soldiers with the following RE codes are fully eligible for RC enlistment/assignment if last discharge was from the RA or other Services with the same reason and authority:

- (1) RE-1, RE-1A, RE-1B, and RE-1C.
- (2) RE-2, RE-2A, RE-2C, 3A, and 3C.
- (3) RE-3, if DD Form 214/215 is annotated with separation authority, separation code, and narrative reason for separation as follows:
  - (a) Separation authority: AR 635-200 and other Service's separation authority.