

**SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND  
THE SHERIFF OF RICHMOND COUNTY, GEORGIA (IN HIS OFFICIAL CAPACITY)  
(DEPARTMENT OF LABOR USERRA CASE NO. GA-2018-00023-20-A)**

1. The parties to this Settlement Agreement (“Agreement”) are the United States of America (“the United States”), Private First Class Auben Kendall (“PFC Kendall”), and the Richmond County Sheriff Richard Roundtree, in his official capacity (“the Richmond County Sheriff”), collectively referred to hereafter as “the Parties.”
2. In his administrative complaint before the Department of Labor, PFC Kendall alleged that his former employer, the Richmond County Sheriff’s Office, violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) by filing suit against him to recover the amount of salary paid to him for his attendance at mandatory job-related training. PFC Kendall alleged in his claims before the Department of Labor that the defendant, the Richmond County Sheriff’s Office (“the RCSO”), filed suit against him in the State Court of Richmond County, Georgia to recover the cost of his salary upon learning that PFC Kendall had an upcoming service obligation, as reflected in the Department of Labor’s investigation of USERRA Case No. GA-2018-00023-20-A. The Richmond County Sheriff denies the allegation in PFC Kendall’s administrative complaint (filed with DOL) that it took action against him because of his military obligations.
3. When the Department of Labor could not resolve PFC Kendall’s claims of a USERRA violation during its administrative process, this matter was referred to the Department of Justice for consideration of the filing of an enforcement action by the United States of America. To avoid further delay or expense, the Parties are voluntarily entering into this Agreement to resolve the United States’ determination that the Richmond County Sheriff violated USERRA.
4. The Richmond County Sheriff’s Office denies that it has violated USERRA. Nevertheless, PFC Kendall and the RCSO have agreed that this matter should be resolved by the execution of this Settlement Agreement to avoid the necessity of litigation. This Settlement Agreement is being entered with the assent of the Parties and shall not constitute a judicial adjudication or finding on the merits of this matter or be construed as an admission by Richmond County Sheriff’s Office of any violation of USERRA, or any other law, rule, or regulation dealing with, or in connection with, equal employment opportunities for PFC Kendall.
5. This Settlement Agreement shall become effective as of the date the last Party signs the Agreement, referred to as the “Effective Date,” and resolves all differences between the Parties with respect to the United States’ determination related to USERRA case No. GA-2018-00023-20-A through the Effective Date.
6. This Settlement Agreement shall be binding and enforceable against the Richmond County Sheriff Richard Roundtree, in his official capacity (including his successors in interest and office). The Richmond County Sheriff shall ensure that the Richmond County Sheriff’s

Office management and employees acting within the scope of their employment comply with this Agreement.

## **Remedial Requirements**

7. The Richmond County Sheriff shall comply with all provisions of the USERRA and shall not take any action against any person which constitutes retaliation or interference with the exercise of such person's rights under USERRA, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.
8. The Richmond County Sheriff shall not charge any servicemember who leaves his or her employment with the Richmond County Sheriff's Office to perform service in any uniformed service for any funds expended in his or her employment-related training, whether pursuant to a Training Agreement or otherwise, and the Richmond County Sheriff shall not take any measures (formal or informal) to collect or recover these funds from such servicemember.
9. The Richmond County Sheriff acknowledges that PFC Kendall left his employment at the Richmond County Sheriff's Office in order to perform service in a uniformed service. As such, within ten (10) days of the Effective Date, the Richmond County Sheriff shall place PFC Kendall in leave status effective retroactively to the date of August 3, 2018 and shall ensure that the Richmond County Sheriff's Office's records reflect this status. If PFC Kendall seeks reemployment with the Richmond County Sheriff's Office in the future, the Richmond County Sheriff shall ensure that this request is timely processed in accordance with the USERRA sections governing reemployment. The Richmond County Sheriff shall not seek to recover through any mechanism (now or in the future) any funds expended in training by PFC Kendall (including but not limited to his salary) between February 2016 and August 2018.
10. Within twenty (20) days of the Effective Date, the Richmond County Sheriff will develop and submit to the United States for review a proposed USERRA policy for the Richmond County Sheriff's Office (in addition to the current policy regarding military leave), which will include but is not limited to incorporating reemployment obligations, leave requirements, and anti-discrimination requirements described in 38 U.S.C. §§ 4311, 4312, 4313(a)(2), 4316, related CFRs, and common law regarding the same. At a minimum, this policy shall inform staff that:
  - a. all employees who are absent from their employment because of military service shall be deemed to be on furlough or leave of absence while performing military service;
  - b. the Richmond County Sheriff's Office shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment to an individual on the basis of the individual's membership in, application for membership or service in, performance of service in, or obligation to a uniformed service; and
  - c. that USERRA guarantees reemployment to members of a uniformed service in some instances, in accordance with USERRA's provisions.

11. Within fifteen (15) days of receipt of the proposed USERRA policy referenced in Paragraph 10, the United States may object if the proposed USERRA policy does not comport with the terms of this Agreement or does not accurately state, or conform to, controlling legal standards. The United States shall notify the Richmond County Sheriff of any objection(s) to the proposed policy in writing within fifteen (15) days of receipt of the proposed USERRA policy and shall specify the nature of the objection.
  - a. If the United States makes no objection(s) within the fifteen (15) day period, the Richmond County Sheriff shall implement the policy within ten (10) days of the end of the objection period.
  - b. If the United States objects within this period, the Richmond County Sheriff may not implement the proposed USERRA policy until the objections have been resolved. The Parties will confer in good faith regarding any disagreements concerning the proposed policy.
  - c. Within ten (10) days of the resolution of any objections, the Richmond County Sheriff shall implement and follow the proposed USERRA policy as resolved.
12. Within ten (10) days from the date upon which the Richmond County Sheriff implements the proposed USERRA policy described in Paragraph 10, the Richmond County Sheriff shall:
  - a. distribute copies of the new USERRA policy to all staff members (including supervisory staff members) working in the Richmond County Sheriff's Office;
  - b. publicize the new USERRA policy by posting it in all buildings and facilities in the locations utilized for posting EEO information and on any internet or intranet website used for posting notices or policy changes for or concerning policies in effect for the Richmond County Sheriff's Office; and
  - c. require each employee, agent, and/or official of the Richmond County Sheriff's Office to sign an acknowledgment (to be maintained in the employee's personnel file) that the copy of the USERRA policy has been received and read.
13. Within sixty (60) days of the date the Richmond County Sheriff implements the USERRA policy referenced in Paragraph 10, the Richmond County Sheriff shall provide final copies of the USERRA policy and a signed declaration that all Richmond County Sheriff's employees have acknowledged in writing the receipt of said policy and forward it to the United States.
14. Within sixty (60) days of the date the Richmond County Sheriff implements the USERRA policy referenced in Paragraph 10, the Richmond County Sheriff shall develop USERRA training materials for use with its staff and shall submit these materials to the United States for review.
15. Within fifteen (15) days of receipt of the proposed USERRA training materials, the United States may object if the proposed USERRA training materials do not comport with the terms of this Agreement or do not accurately state, or conform to, controlling legal standards. The United States shall notify the Richmond County Sheriff of any objection(s) to the proposed training in writing within fifteen (15) days of receipt of the proposed

USERRA training materials and shall specify the nature of the objection. If the United States objects within this period, the Richmond County Sheriff may not implement the proposed USERRA training until the objections have been resolved. The Parties will confer in good faith regarding any disagreements concerning the proposed training.

16. Within ten (10) days of the resolution of any objections or, if the United States makes no objections, within ten (10) days of the expiration of the fifteen (15) day objection period, the Richmond County Sheriff shall train the following staff members on its USERRA policy with these training materials:
  - a. all members of the Richmond County Sheriff's Office's Command Staff;
  - b. the Director of Human Resources and all Human Resources employees of the Richmond County Sheriff's Office; and
  - c. any other individuals with supervisory responsibilities within the Richmond County Sheriff's Office.
17. The Richmond County Sheriff shall ensure that the Trainees view this training in a group session (rather than individually). The Richmond County Sheriff, or a Command Staff Delegate, shall commence each session and state as follows: "The following training relates to employer and employee rights and obligations under the Uniformed Services Employment and Reemployment Rights Act, or USERRA. USERRA generally protects members of the uniformed, military services who also work outside of the military. The Sheriff's Office takes its obligations under USERRA seriously, and it is important that you give your full attention to this presentation. If you have any questions about this material, please speak with me."
18. The Richmond County Sheriff shall require all Trainees to sign a form (to be maintained in the employee's personnel file) acknowledging their attendance for the full length of the training.
19. Within one hundred and twenty (120) days of the Effective Date, the Richmond County Sheriff shall include the USERRA training (whether live or by video) in all management and/or human resources staff trainings.
20. To reinforce the training described above, the Richmond County Sheriff agrees to post the "USERRA Rights Notice" Poster issued by the United States Department of Labor (appended as Attachment A to this Agreement) in all places in the Richmond County Sheriff's Office where other non-discrimination notices are posted in accordance with legal requirements under federal law.
21. The Richmond County Sheriff shall include information about USERRA rights and obligations in the Richmond County Sheriff's Office's employee handbook as it is updated from time to time.
22. The United States reserves the right to make reasonable inquiries to the Richmond County Sheriff as necessary to determine its compliance with this Agreement until the Richmond County Sheriff's obligations under this Agreement have been completely performed.

23. PFC Kendall acknowledges that he has received a copy of this agreement and agrees to have the U.S. Department of Labor and United States Department of Justice close USERRA File No. GA-2018-00023-20-A, as identified above.
24. The Parties further stipulate that this settlement will not act as a confession of judgment. So long as Richmond County Sheriff's Office complies with the terms of this agreement, no judicial action shall be filed in any court regarding this matter. In the event the United States and/or PFC Kendall believe the Richmond County Sheriff's Office has defaulted on its obligations under this Settlement Agreement, the party claiming that the Richmond County Sheriff's Office has defaulted will provide written notice of default to the Richmond County Sheriff's Office at least thirty (30) business days prior to filing an enforcement action. If the Richmond County Sheriff's Office cures the alleged default within 30 business days from the receipt of the notice of default, no enforcement action shall be filed to enforce this Settlement Agreement. If the RCSO fails to cure the default, the United States and/or PFC Kendall may file a complaint to enforce the relevant portions of the Settlement Agreement.
25. Failure of the Richmond County Sheriff and the Richmond County Sheriff's Office to comply fully with the term in Paragraph 9 of this Settlement Agreement immediately authorizes PFC Kendall to request the U.S. Department of Labor's Veterans' Employment and Training Service to re-open the case for further investigation and possible referral for litigation in federal court or to seek private counsel to resolve the case.
26. Nothing in this Agreement precludes PFC Kendall from filing claims under USERRA stemming from conduct occurring after the execution of this Agreement.

### **Miscellaneous Provisions**

27. The Parties shall bear their own costs, expenses, and attorneys' fees in this matter, including the costs of compliance, except that the Parties shall retain the right to seek costs and fees for any matter which, in the future, may arise from this Agreement and require resolution by a Court.
28. The Parties agree that, as of the Effective Date, litigation regarding the alleged violations of USERRA that are the subject of the United States' determination is not reasonably foreseeable. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to this matter, the Party is no longer required to maintain such a litigation hold. Nothing in this Paragraph relieves either Party of any other obligations imposed by this Agreement.
29. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected, and the term or provision shall be deemed not to be a part of this Agreement. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is invalid.


30. This Agreement may be enforced in the United States District Court for the Southern District of Georgia. This Paragraph, or the initiation of a lawsuit to enforce the Agreement under this Paragraph (including any counterclaims asserted), does not constitute and should not be construed as a waiver of sovereign immunity or any other defense either party might have against a claim for enforcement.
31. This Agreement constitutes the entire agreement and commitment between the Parties. Any modifications to this Agreement must be mutually agreed upon and memorialized in a writing by all parties.
32. This Agreement shall be deemed to have been drafted by all Parties and shall not be construed against any one party in the event of a subsequent dispute concerning the terms of the Agreement.
33. The Parties' undersigned representatives certify that they are fully authorized to enter into this Agreement and to execute and legally bind the United States, PFC Kendall, and the Richmond County Sheriff.
34. This Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one Agreement. The Parties agree to be bound by facsimile signatures.


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DATED: 3/16/2020

ERIC S. DREIBAND  
Assistant Attorney General  
Civil Rights Division

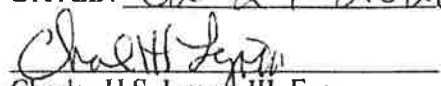
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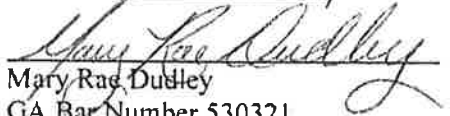
  
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DATED: 25 February 2020

  
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# Attachment A





# YOUR RIGHTS UNDER USERRA

## THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

**USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.**

### REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

### RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

### HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

### ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its website at <http://www.dol.gov/vets>. An interactive online USERRA Advisor can be viewed at <http://www.dol.gov/elaws/userra.htm>.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.



**U.S. Department of Labor**  
1-866-487-2365



**U.S. Department of Justice**



**Office of Special Counsel**



**1-800-336-4590**

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