

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,

Defendants.

Case No. 2:17-cv-01297-MJP

**DECLARATION OF LINDSEY
MULLER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:

October 6, 2017

ORAL ARGUMENT REQUESTED

I, Lindsey Muller, declare as follows:

1. My name is Lindsey Muller. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am a 35-year-old woman, and I live in Seoul, South Korea with my wife, who is a veteran of the Marine Corps.

3. I am a Chief Warrant Officer 3 (CW3) in the U.S. Army and am currently stationed at U.S. Army Garrison Yongsan Army Base in Seoul, South Korea.

4. I enlisted in the U.S. Army in 2000. I have been serving for more than seventeen years.

5. I am a member of the Human Rights Campaign and the American Military Partner Association.

DECLARATION OF LINDSEY MULLER
IN SUPPORT OF PLAINTIFFS' MOTION FOR
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[2:17-cv-01297-MJP]

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Seattle, Washington 98121
(206) 274-2800

6. I chose the military as a career path because of the opportunities that it can provide and in fact has provided me. I grew up in a very low-income household in Poplar Bluff, Missouri where the only job opportunities were in agriculture and factories that did not provide much opportunity for upward mobility. I wanted specialized education and training, but college was not an option for me because of the expense. I also wanted to elevate myself economically and see more of the world. These goals, together with my strong sense of patriotism, led me to meet with a military recruiter and to enlist in the Army. I have stood shoulder to shoulder with fellow soldiers in combat. I genuinely love and am proud of what I do.

7. My military occupation specialty is Attack Helicopter Pilot/Aviator within the Army and I currently perform duties as an Aviation Safety Officer. Currently, my duties involve providing combat support and combat service support to various echelons of commands up to the division level, including one headquarters support company, one distribution company, one Aviation Intermediate Maintenance company, one signal company, and two engineer companies. I am the principle advisor to Commanders on all aviation and ground related safety matters. I protect more than 1,100 Soldiers and their families and over 300 vehicles and rolling stock valued at over \$70 million. I am responsible for managing the Battalion Commander's Safety Program and developing safety policies, safety goals, mission objectives, priorities, and integrating them into daily operations. I also assist Commanders with quarterly Command Safety Councils, develop risk assessments, and mitigate risks to ensure a safe and effective Aviation Support Battalion.

8. Before my current role, I performed duties as a Team Leader, Squad Leader, Army Recruiter, Instructor/Writer, Proponent Chief, Pilot in Command, and Air Mission Commander.

9. I served in Operation Iraqi Freedom, Operation Enduring Freedom, and multiple assignments in the Republic of Korea.

10. I have extensive training. My military and civilian education include the Army Combat Communications Course, Expert Infantry Badge; Combat Infantry Badge; Master

Breacher Demolition Course; Master Driver Trainer Course; Air Assault Badge; U.S. Army Recruiting School; Advanced Leaders Course; Army Family Team Building Instructor (Levels I, II, III); Survival, Evasion, Resistance & Escape School (SERE B – C/High Risk); U.S. Army Warrant Officer Course; Aviation WOBC, Aviation Life Support Equipment Course; AH-64D Longbow Apache Qualification Course; Aviation Safety Officer Course; Commander's Safety Course; Aircraft Mishap Investigation Course; Foundation Instructor Facilitator Course; Small Group Instructor Training Course; OSHA Standards for General Inspector; and Federal Aviation Administration Commercial Pilot.

11. The military has invested significant resources in training me. Based on my previous experience as a flight instructor, I understand that the military has invested approximately \$1.5 million in the training associated with my specific aircraft skill-set alone. My skills make me a highly valued member of the military.

12. My performance has been consistently recognized throughout my time in military service. My awards and decorations include the Army Commendation Medal 2 oak leaf clusters (2 OLC), Army Achievement Medal (2 OLC), Valorous Unit Award, Meritorious Unit Award, Army Superior Unit Award, Army Good Conduct Medal (2nd award), National Defense Service Medal, Iraq Campaign Medal Campaign Star, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, Non-Commissioned Officer Professional Development Ribbon (2nd award), Army Service Ribbon, Overseas Service Ribbon (2nd award), , Expert Infantry Badge, Combat Infantry Badge, Army Aviator Badge, and Air Assault Badge. Additionally, I served for a time as an Army recruiter and earned every recognition achievable for that position including: three gold achievement stars for my Basic Recruiter Badge, the Gold Recruiter Badge with three sapphire achievement stars, the Army Recruiter Ring, and the Glenn E. Morrell Medallion.

13. If I could, I would continue serving in the army as long as I am physically able to do so.

14. I am transgender. I was assigned the sex of male at birth. I have known for more

1 than twelve years that I am female.

2 15. I began to come to terms with my gender identity approximately five years ago.
3 At that time, I started to see a mental health professional who diagnosed me with gender
4 dysphoria.

5 16. I began living openly as a woman in 2014.

6 17. In consultation with health care professionals, I have taken clinically appropriate
7 steps to transition, and I have further transition-related health care needs—including medically
8 necessary surgical treatment.

9 18. I have taken legal steps to transition. In May of 2015, I legally changed my first
10 name to Lindsey. At that time, I also changed my name and changed my gender marker to
11 female on my driver's license, passport, and social security records.

12 19. I came out in the military as transgender in 2014, my commander was incredibly
13 supportive. In fact, every person within my chain of command was supportive of my transition
14 and asked me to stay on in the military even though I had offered to resign, in light of the then-
15 existing bar against open service. Additionally, other enlisted personnel have been supportive of
16 me throughout my transition process.

17 20. Despite the fact that my command was supportive of my transition, I was
18 temporarily medically grounded, meaning that I could not pilot helicopters, because of my
19 transition. I was told that I was grounded for two reasons: (1) because I was on hormone
20 replacement therapy and (2) because I intended to transition. Under the guidance in 2014, I was
21 deemed administratively unfit to fly because I wanted to pursue transition.

22 21. Since then, I have pursued a waiver in order to perform full flight duties. I have
23 also been cleared by four aeromedical psychologists as competent to perform full flight duties.
24 Because I have not yet had surgeries I require as part of my transition, I take a testosterone
25 blocker, which has been cited as a reason for my grounding. It is my understanding that non-
26 transgender people on hormone replacement therapy routinely receive waivers to qualify to fly.

27 22. If I were permitted to complete the course of treatment that is part of my

1 transition plan, including required surgeries, then I would no longer be required to take a
2 testosterone blocker and would therefore no longer need a waiver to fly.

3 23. The fact that I am transgender has not prevented me from doing my job as
4 Aviation Safety Officer nor has my gender identity prevented others from doing their jobs in the
5 military. I perform valuable services for the Army, and my performance of those duties
6 strengthen our nation's military readiness. In fact, in my most recent evaluation, my Brigade
7 Commander noted that I am the best Battalion Safety Officer within the Brigade and am, in his
8 view, one of the top 25% of all Warrant Officers within the Brigade. Within the review he
9 recommended me for promotion.

10 24. Being able to serve openly as a transgender woman has made me a stronger asset
11 to the military. I am able to function as a productive, healthy member of the military, and I am
12 able to forge stronger relationships with others in my unit. Additionally, my openness has given
13 other service members the confidence that they need to seek mental health care without fear of
14 reprisal. When members who are in need of mental health service seek that care, that improves
15 readiness because it reduces suicidality, reduces instability in the unit, and therefore, reduces the
16 number of members who could be found unfit to serve based on untreated mental health issues.

17 25. On June 30, 2016, Secretary of Defense Ash Carter announced a new military-
18 wide policy lifting the ban on transgender service. This change in policy permitted other people,
19 similarly situated to me, to come out and serve openly as transgender members of the military
20 without fear of forced separation based on their transgender status. When the ban was lifted, I
21 felt a great weight lifted from my shoulders. I also considered the new inclusive policy from my
22 perspective as an officer; I immediately wanted to know what regulatory changes would be
23 implemented to support the medical and legal needs of transgender service members. I believe
24 that the policies and protocols implemented over the last year have provided support to both
25 openly serving transgender members and to their commanding officers.

26 26. On October 1, 2016, the DoD issued instructions for implementing the new
27 inclusive policy. Among the provisions were procedures for how transgender service members

1 may transition, for medical treatment, and for changing a service member's gender marker in the
2 Defense Enrollment Eligibility Reporting System (DEERS).

3 27. In February 2017, I changed my gender marker in DEERS. Since that time, I have
4 followed female standards for dress, grooming, and physical fitness.

5 28. Over the last year, the DoD has been implementing the new inclusive policy,
6 including through transgender-specific trainings. I have assisted in the provision of these
7 trainings to fellow service members and to dozens of command teams. All told, I have reached
8 hundreds of service members and I know that my voice, as coming from a Chief Warrant
9 Officer, has helped to alleviate concerns of members in command positions because I perceive
10 issues that could affect military readiness through the lens of an officer.

11 29. On July 26, 2017, President Trump posted three tweets that indicated a shift in
12 policy towards open service by transgender members of the military.

13 30. Since the tweeted policy change and the memorandum directing a ban on service
14 by openly transgender service members were released, I have felt like the rug has been pulled out
15 from under me and my anxiety has been extremely high. Knowing that my Commander-in-Chief
16 and his military advisors view my service as a burden has utterly crippled my morale. It was a
17 devastating blow that wounded me more than any combat injury could, because this
18 discriminatory policy cuts to the core of *who I am*. I feel that my career is being destroyed by
19 discrimination and prejudice.

20 31. It has been difficult for me to go to work thinking that I am viewed as an
21 inconvenience, in spite of the recognition and awards I have received for my work. It is
22 challenging to perform to standards when I have been told I am facing loss of my job. I cannot
23 express how hurt I am by this policy—it is sending a public message denouncing thousands of
24 service members and dedicated professionals, who have proven their competence time and time
25 again, many through multiple tours of duty throughout fourteen years of military conflict.

26 32. Because of the change in policy, I have been having anxiety attacks, but seeking
27 help for this issue places me in a difficult position of potentially facing a medical evaluation

1 board regarding my fitness to serve as an aviator. Nonetheless, I requested anxiety medication
2 from my doctor after the President posted the tweets because my interpretation was that I was
3 being fired after more than seventeen years of honorable service. Additionally, I have a family
4 and my healthcare, pension, and retirement benefits are now all in jeopardy.

5 33. My wife and I are struggling to come to grips with all the consequences of losing
6 my career and benefits. My wife also is transgender as well as a Veteran of the Marine Corps.
7 We are in constant fear that we will lose many protections that shield us from discrimination
8 within the military system.

9 34. My wife and I both rely on TRICARE for all of our medical needs. Upon my
10 separation from the Army, we would lose access to our health care, which would be incredibly
11 stressful.

12 35. My primary care physician has determined that it is medically necessary for my
13 transition plan that I receive genital surgical treatment. In early July, my doctor was arranging
14 the date for the surgery with a visiting military urologist. However, just days after President
15 Trump's announcement of the change in policy through Twitter, all efforts to arrange the surgery
16 were called off.

17 36. Had the policy towards inclusive transgender service and provision of medically
18 necessary transition-related care not been reversed, I would have received genital surgical
19 treatment. After I receive that treatment, I will no longer need to take a testosterone blocker.
20 Therefore, I would no longer need a waiver to fly and could return to my full flight duties. This
21 would enhance my unit's military readiness because we would have additional aviation capacity.

22 37. I have engaged in speech and conduct disclosing my transgender status and
23 expressing my gender identity, including by coming out to my chain of command and my fellow
24 service members, taking steps to transition, and living openly as a woman in military life. I want
25 to continue to be able engage in speech and conduct disclosing my transgender status and
26 expressing my gender identity.

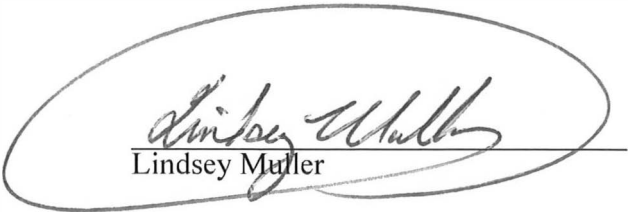
27 I declare under the penalty of perjury that the foregoing is true and correct.

28 DECLARATION OF LINDSEY MULLER
IN SUPPORT OF PLAINTIFFS' MOTION FOR
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2 DATED: September 14, 2017


Lindsey Muller

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DECLARATION OF LINDSEY MULLER
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that on September 14, 2017, I caused true and correct copies of the foregoing documents to be served by the method(s) listed below on the following interested parties:

By Hand Delivery:

US Attorney's Office
700 Stewart St., Suite 5220
Seattle, WA 98101-1271

By Registered or Certified Mail:

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Department of Defense
1400 Defense Pentagon
Washington, DC 20301-1400

Secretary of Defense James N. Mattis
1000 Defense Pentagon
Washington, DC 20301-1000

President Donald J. Trump
1600 Pennsylvania Ave. NW
Washington, DC 20500

I hereby certify under the penalty of perjury that the foregoing is true and correct. Executed on September 14, 2017 at Seattle, Washington.

s/Rachel Horvitz

Rachel Horvitz, *Paralegal*