



U.S. Department of Justice
Civil Division, Appellate Staff
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December 20, 2017

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

RE: *Stone v. Trump*, No. 17-2398 (4th Cir.)

Dear Ms. Connor:

Pursuant to Fed. R. App. P. 28(j), we write in response to Plaintiffs' letter of December 19, 2017. Plaintiffs contend that United States Military Entrance Processing Command (USMEPCOM) Policy Memorandum 2-5 undercuts the government's explanation, supported by a declaration from current military leadership, that rushed compliance with the January 1 deadline will harm our armed forces. That accusation misses the mark for at least two reasons.

First, all that this memorandum demonstrates is that the military is scrambling to comply with the injunction by, *inter alia*, issuing guidance. As military leadership has explained, proper implementation of the Carter policy requires providing adequate "guidance, resources, and training" to those responsible for implementing accession standards. Add. 101. Memorandum 2-5 is an effort to furnish some guidance to these service members, but it is no substitute for the training necessary to ensure that the Carter policy is implemented properly. Indeed, in a clarifying USMEPCOM memorandum from December 19, 2017 (attached), the military established a framework for providing responses to medical inquiries from recruiters "[d]ue to the complexity of this new medical standard." Obviously, it would be preferable to thoroughly train recruiters, rather than point them to a medical hotline. In short, our armed forces should not be prejudiced by attempting to do all that they can to comply with a court order on a rushed deadline.

Second, Memorandum 2-5 has no bearing on the fact that the government seeks to ensure that the injunction does not preclude Secretary Mattis from deferring implementation of the Carter policy, wholly apart from the President's directive, to study the issue further, just as he did in June 2017. Even adopting plaintiffs' erroneous assumption that rushed compliance with a January 1 deadline would not harm military readiness, Secretary Mattis cannot, without risking contempt, exercise his independent authority to give the military more time to consider a momentous change to its accession standards. That alone is a significant injury to our armed forces.

Sincerely,

/s/ Catherine Dorsey

Catherine H. Dorsey
Attorney, Appellate Staff

cc: all counsel via CM/ECF

encl.



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MECD

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MEMORANDUM FOR SECTOR COMMANDERS
BATTALION COMMANDERS
MEPS COMMANDERS
DIRECTORS AND SPECIAL STAFF OFFICERS

SUBJECT: Clarifying Guidance to USMEPCOM Policy Memorandum 2-5, Transgender Applicant Processing

References:

- (a) United States Military Entrance Processing Command Policy Memorandum 2-5, "Transgender Applicant Processing," dated December 8, 2017.
- (b) Deputy Secretary of Defense Memorandum, "Medical Standards for Appointment, Enlistment, or Induction of Transgender Applicants into the Military Services," dated December 8, 2017.
- (c) USMEPCOM Regulation 40-1, "Medical Qualification Program," dated July 24, 2017.
- (d) Army Regulation 601-270/OPNAVINST 1100.4C CH-2/AFI 36-2003/MCO 1100.75/COMDTINST M. 1100.2E, "Military Entrance Processing Station," RAR dated September 13, 2011.

PURPOSE. This memorandum provides clarifying guidance to Reference (a). This memorandum does not cancel or replace Reference (a). This clarifying guidance memorandum shall remain in effect until Reference (a) is expressly revoked.

APPLICABILITY. This clarifying guidance applies to all USMEPCOM personnel and activities.

CLARIFYING POLICY GUIDANCE.

Processing: USMEPCOM policy on processing is not intended to eliminate the recruiter's ability to perform preliminary screening of applicants as allowed in existing policy and regulations. This policy guidance was intended to emphasize the use of existing access to local MEPS medical departments, enabling recruiting personnel to obtain answers to questions concerning an applicant's medical condition(s) in accordance with USMEPCOM Regulation, Medical Qualification Program (UMR 40-1), para 2-1a-d, "MEPS Dial-A-Doc/Email-A-Doc" programs. Due to the complexity of this new medical standard, the use of these existing programs will ensure recruiters are making an informed preliminary screening determination on medical conditions that were previously disqualifying.

MEPS Medical Departments will ensure timely response to recruiter inquiries through the Dial-A-Doc/Email-A-Doc programs. As outlined in Reference (c) medical inquiries that require

additional policy clarification will be forwarded to the MEPCOM Operations Center (MOC) through the established MOC ticket system.

The point of contact for operational aspects of this policy is the Accession Division, J-3/MEOP-AD, (847) 688-3680 ext. 7519, email osd.north-chicago.usmepcom.list.hq-j3-meop-accession-division@mail.mil. The point of contact for all medical related questions is the Clinical Operations Division, J-7/MEMD-COD, (847) 688-3680 ext. 7132, email osd.north-chicago.usmepcom.list.hq-j7-memd-clinical-ops-div@mail.mil.



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