

No. 17-36009

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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RYAN KARNOSKI, et al.,  
Plaintiffs-Appellees,  
v.

DONALD TRUMP, President of the United States, et al.  
Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

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**EMERGENCY MOTION  
UNDER CIRCUIT RULE 27-3 FOR ADMINISTRATIVE STAY  
AND MOTION FOR STAY PENDING APPEAL**

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## CIRCUIT RULE 27-3 CERTIFICATE

The undersigned counsel certifies that the following is the information required by Circuit Rule 27-3:

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**(2) Facts showing the existence and nature of the emergency**

As set forth more fully in the motion, the district court entered a nationwide preliminary injunction requiring the Department of Defense to implement a policy permitting the accession of transgender individuals into the military by January 1, 2018, while the Department is still completing its study to determine the appropriate accession policy to adopt. The district court's preliminary injunction imposes irreparable harm on the defendants and the general public by forcing the military to implement a complicated accession policy on a rushed timetable and before the necessary personnel can be trained to properly implement that policy. Moreover, it requires the military to adopt a certain accession policy before it has made a final determination as to what, in the military's view, the appropriate policy should be. Due to the district court's injunction, the military may have to access some individuals who are not medically fit for service starting on January 1, 2018.

**(3) When and how counsel notified**

Counsel for defendants notified plaintiffs' counsel by email on December 15, 2017, of the defendants' intent to file this motion. Service will be effected by electronic service through the CM/ECF system.

**(4) Submissions to the district court**

The defendants requested a stay from the district court on December 15, 2017, which the district court has not yet acted upon.

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## INTRODUCTION

For decades, the military has presumptively barred transgender individuals from accession into the armed forces. Last year, however, then-Secretary of Defense Ashton Carter ordered the revision of this accession policy to allow some transgender individuals to enter the military starting on July 1, 2017. On June 30, 2017, Secretary of Defense James Mattis deferred that revision until January 1, 2018, so that the services could assess the Carter policy's effect on military readiness. The President then issued a memorandum on August 25, 2017, directing Secretary Mattis to maintain the current accession policy past January 1, in order to study whether the Carter policy would harm military readiness and to provide the President with an independent recommendation. Consistent with that directive, the military is studying the issue and will make its recommendation by February 21, 2018.

The court below ended this orderly process. On December 11, 2017, it issued a preliminary injunction barring the military from implementing the President's directive to defer revising the accession policy past January 1, as well as separate directives concerning retention of transgender service members and funding for their sex-reassignment surgeries. On December 15, the government sought clarification that the district court's injunction does not preclude Secretary Mattis from exercising his independent authority to defer the January 1 "deadline" for a limited time, as he did in June 2017. In the alternative, the government sought a stay pending appeal of the injunction of the accession directive. The district court has yet to act on these requests.

Without the requested clarification (or a stay), the military must implement the Carter accession policy by January 1. In light of that impending deadline, and to give this Court adequate time to consider these issues, the government asks this Court for a stay pending appeal of the injunction insofar as it concerns accessions and an administrative stay until the Court resolves this motion.<sup>1</sup> *See* Fed. R. App. P. 8(a)(2)(A)(ii). Absent such relief, the military will be forced to implement a significant change to its accession standards before it decides how to resolve this issue. As military leadership has explained, this timetable will place extraordinary burdens on our armed forces and may harm military readiness. Conversely, the plaintiffs who claim that the accession directive will affect them will suffer no irreparable injury from a stay.

The simplest way for this Court to prevent the looming irreparable harm to the government is through a stay that narrows the injunction in one of two respects. First, the Court could rule that there would be no basis for enjoining Secretary Mattis from exercising his own discretion to defer implementing the Carter policy for a limited time while the military completes its study or implements the change, as he did in June 2017. Second, it could hold that the nationwide scope of the injunction is inappropriate and stay its prohibition on enforcing the accession directive with respect to applicants other

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<sup>1</sup>The government does not seek a stay with respect to the retention directive or the sex-reassignment directive, neither of which takes effect until March 23, 2018. The military is not taking any action against current service members (nor does it have any immediate plans to do so), and it is continuing to fund their sex-reassignment surgeries. *Add.* 28. The military is currently determining its policy on these issues, and may seek a stay of these aspects of the injunction at a later date after a final policy determination.

than the individual plaintiffs found to have standing to challenge that order. Of course, the Court could also stay the entire portion of the injunction dealing with accessions, as that order rests on legal errors concerning jurisdiction, the equities, and the merits.

Without a stay, the military will, at the risk of harming its readiness posture, have to rush to provide the requisite training to the tens of thousands of service members across the country responsible for implementing accession standards and, as of January 1, could be forced to access some individuals who are not medically fit for service. The government therefore respectfully asks this Court to issue an immediate administrative stay pending consideration of this motion or grant a stay as soon as possible.

### **BACKGROUND**

1. To ensure that service members are “capable of performing duties,” are free of conditions that “may require excessive time lost from duty for necessary treatment or hospitalization,” and are “adaptable to the military environment without the necessity of geographical area limitations,” the military maintains accession standards that presumptively exclude individuals with certain medical conditions from serving, subject to an individualized waiver process. Dep’t of Defense Instruction 6130.03, at 2, 7 (Apr. 28, 2010). For decades, these standards have presumptively barred transgender individuals from entering the military. *Id.* at 27, 48.

In June 2016, then-Secretary Carter ordered the Defense Department to revise its accession standards by July 1, 2017. *Id.* 31-36. Under this revision, a history of “gender dysphoria,” “medical treatment associated with gender transition,” or “sex

reassignment or genital reconstruction surgery” would be disqualifying unless an applicant could obtain a certificate from a licensed medical provider that the applicant had been stable or free from associated complications for 18 months. Add. 34-35.

2. The Carter accession policy was never implemented because on June 30, 2017, Secretary Mattis “approved a recommendation by the services to defer” the revision until January 1, 2018. Add. 30. The deferral was designed to allow the branches to “review their accession plans and provide input on the impact to the readiness and lethality of our forces.” *Id.*

On July 26, the President stated on Twitter that the government “will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military.” Add. 3. The President then issued an official memorandum on August 25 addressing the accession and retention of transgender service members as well as government funding for their sex-reassignment surgeries. Add. 24-26. With respect to accession standards, the President found that former-Secretary Carter had “failed to identify a sufficient basis to conclude” that his revision “would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources.” Add. 24 (Mem. § 1(a)). In the President’s view, “further study is needed to ensure that continued implementation of last year’s policy change would not have those negative effects.” *Id.* Accordingly, the President directed the Secretaries of Defense and Homeland Security to “maintain the currently effective policy regarding accession of transgender individuals” past January 1, 2018, until the Secretary of Defense, after consultation with the Secretary of

Homeland Security, “provides a recommendation to the contrary that I find convincing.” Add. 25 (§ 2(a)). The President also ordered Secretary Mattis to submit an implementation plan to him by February 21, 2018. Add. 25 (§ 3).

In response, Secretary Mattis promised to “develop a study and implementation plan” that will address, *inter alia*, “accessions of transgender individuals.” Add. 29. In the meantime, the rule “generally prohibit[ing] the accession of transgender individuals” would “remain[] in effect because current or history of gender dysphoria or gender transition does not meet medical standards.” Add. 28.

3. Plaintiffs—nine individuals, three organizations, and Washington State—sought a preliminary injunction of the memorandum’s directives. As relevant here, the court ruled that four individual plaintiffs had standing to challenge the accession directive, Add. 7-8;<sup>2</sup> applied intermediate scrutiny and concluded that plaintiffs’ equal protection, substantive due process, and First Amendment challenges to that directive were likely to succeed, Add. 15-20; and held that the remaining factors counseled in favor of a preliminary injunction, Add. 20-22. As it was “not convinced that reverting to the June 2016 Policy ... which has been in place for over a year without documented negative effects, will harm Defendants,” the court dismissed the government’s concerns

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<sup>2</sup> The district court also held that the three organizational plaintiffs and Washington State generally had standing to challenge the Presidential Memorandum, but did not specify *which* directive they had standing to challenge. Add. 10-12. In any event, the court held that the organizations’ standing was derivative of that of the individual plaintiffs. Add. 10-11.

of irreparable harm. Add. 22. It then enjoined the government “from taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump’s July 26, 2017 announcement.” Add. 23.

4. The government appealed on December 14 and subsequently asked the district court to clarify that its injunction does not bar Secretary Mattis from exercising his independent discretion to defer implementing the Carter policy past January 1, for a limited time, to study the policy change further or to implement the revision. Doc. 106. In the alternative, the government sought a stay of the injunction of the accession directive, accompanied by a declaration from the Acting Deputy Assistant Secretary of Defense for Military Personnel Policy explaining that complying with the court’s January 1 deadline would “impose extraordinary burdens” on the Defense Department and have a “harmful impact” on “the military, its missions, and readiness.” Add. 38-39. The district court has not acted on that motion.

### **ARGUMENT**

The Court should stay the district court’s injunction insofar as it requires the military to alter its accession policy by January 1, 2018. In considering whether to grant a stay pending appeal, a court must balance four factors: (1) the applicant’s likelihood of success on the merits; (2) whether the applicant will suffer irreparable injury; (3) the balance of hardships to other parties interested in the proceeding; and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). This Court reviews a grant of a preliminary injunction for abuse of discretion, but legal conclusions are reviewed de

novο. *Aircraft Serv. Int'l, Inc. v. Int'l Bhd. of Teamsters*, 779 F.3d 1069, 1072 (9th Cir. 2015) (en banc). Here, the government is likely to establish that the district court abused its discretion, as that court's analysis was infected by a number of serious legal errors. Unless stayed (or clarified), that injunction will irreparably harm the government (and the public) by, *inter alia*, compelling the military to scramble to revise its policies at the risk of harming readiness and disrupting an ongoing process that is only a few months away from completion. A stay, by contrast, would preserve the status quo and not injure any of the plaintiffs.

**I. The Government Is Likely To Succeed On The Merits.**

**A. Secretary Mattis Has Independent Authority To Defer Revising The Accession Policy.**

The district court in *Doe v. Trump*, No. 17-1597 (D.D.C.), construed its injunction to prohibit Secretary Mattis from exercising his independent discretion to defer the January 1 deadline. In the event that the district court here follows suit, this Court should stay that aspect of the injunction.

The Secretary of Defense has independent authority to delay policy changes regarding the composition of the armed forces. *See, e.g.*, 10 U.S.C. § 136(b) (recognizing his authority over “the areas of military readiness, total force management, [and] military and civilian personnel requirements”). Plaintiffs therefore never sought to prohibit Secretary Mattis from independently deferring implementation of the Carter policy, even though he had previously done so in June. Instead, they asked the district court

only to stop defendants from “taking any action relative to transgender individuals ... that is inconsistent with the *status quo* that existed on July 25, 2017,” which was the day before the President’s statement on Twitter. Doc. 32 at 31; *see also* Add. 2 (plaintiffs sought “preliminary injunction to prevent implementation of the policy set forth in the Presidential Memorandum”). Because plaintiffs challenged only the President’s orders, it is unsurprising that the preliminary injunction preserved the status quo “prior to President Trump’s July 26, 2017 announcement,” Add. 23, but never addressed Secretary Mattis’s own authority to delay revising accessions standards.

Similarly, the district court’s justifications for enjoining the accession directive concern the President and his memorandum alone. Specifically, the court concluded that “the policy set forth in the Presidential Memorandum denies [plaintiffs] equal protection,” Add. 15, rejected “the reasons proffered by the President for excluding transgender individuals from the military,” Add. 16, and declined to show the military any deference because the President’s announcement “on Twitter” lacked “evidence of considered reason or deliberation.” Add. 18. None of those reasons supports enjoining Secretary Mattis from making an independent decision to defer implementing the Carter policy for a limited time to study the issue further or to avoid the harms of rushing to comply with the January 1 deadline. *See infra* Part I.C.2.

Indeed, rather than preserve “the status quo that existed prior to President Trump’s July 26, 2017 announcement,” Add. 23, construing the injunction to restrict Secretary Mattis’s authority would dramatically alter it. Under the status quo ante,

Secretary Mattis could exercise his own authority to defer implementing the Carter policy, as he did in June 2017 without any objection from plaintiffs or others. There is no meaningful difference between that decision in June and a renewed, independent decision by Secretary Mattis to extend the deadline for a limited period past January 1. Thus, in the absence of a prompt ruling by the district court that its injunction does not constrain Secretary Mattis's own authority to defer the Carter policy, this Court should stay the injunction to the extent it constrains the Defense Secretary's discretion.

**B. This Court Should Stay The Preliminary Injunction Insofar As It Grants Nationwide Relief.**

Although only four individual plaintiffs claimed that the accession directive may affect them, the district court entered a preliminary injunction barring implementation of that directive nationwide. In doing so, it gave no explanation for why such broad relief was necessary to redress those alleged injuries. Nor could it. That injunction violates principles of Article III and exceeds the court's equitable authority.

To establish standing, a plaintiff "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006). "[S]tanding is not dispensed in gross," and a plaintiff must establish standing "separately for each form of relief sought." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017). "The remedy" sought therefore must "be limited to the inadequacy that produced the injury in fact that the plaintiff has established." *Lewis v Casey*, 518 U.S. 343, 357 (1996).

Equitable principles likewise require that an injunction “be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994); *see also Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 163 (2010) (narrowing injunction in part because the plaintiffs “do not represent a class, so they could not seek to enjoin such an order on the ground that it might cause harm to other parties”). And these constitutional and equitable limits apply with special force to injunctions concerning military policies. *See U.S. Dep’t of Def. v. Meinhold*, 510 U.S. 939 (1993) (staying injunction against military policy to the extent it conferred relief on anyone other than plaintiff); *Meinhold v. U.S. Dep’t of Def.*, 34 F.3d 1469, 1480 (9th Cir. 1994) (vacating injunction save to the extent it applied to plaintiff).

Here, the district court held that four individual plaintiffs had standing to challenge the accession directive. Add. 7-9. But in entering its preliminary injunction, the court did not limit its remedy to their injuries; instead, it barred application of the accession directive nationwide. Such wide-ranging relief cannot be reconciled with constitutional or equitable principles, nor is it necessary to remedy the alleged injuries of a handful of individuals.<sup>3</sup>

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<sup>3</sup> The district court’s holding that three organizations and Washington State had standing to challenge the Presidential Memorandum, generally, does not change the analysis. Add. 10-12. Even assuming *arguendo* that these plaintiffs had standing to challenge the accession directive, *but see infra* Part I.C.1, nationwide relief would be inappropriate. Based on plaintiffs’ allegations, the only individuals with ties to Washington State or these organizations who may be affected by this directive are two individual plaintiffs (Karnoski and Schmid).

A limited stay pending appeal, by contrast, would pose no harm to plaintiffs. A narrow injunction, barring the application of the accession directive to these four plaintiffs would provide them with full relief. And to the extent that other applicants believe they have cognizable injuries, they are free to bring their own challenges—as some have done. *See, e.g., Doe v. Trump*, 2017 WL 4873042 (D.D.C. Oct. 30, 2017).

**C. The Injunction Of The Accession Directive Should Be Vacated.**

Finally, the injunction of the accession directive rests on several legal errors.

1. To start, none of the plaintiffs who claim they will be affected by the accession directive has standing to challenge that order. Where, as here, a challenge would require this Court “to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional,” its “standing inquiry [must be] especially rigorous.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013). The district court erred in holding that plaintiffs met that exacting standard.

The four relevant individual plaintiffs fail to satisfy Article III’s demands. The district court first erred in holding that one of them, Schmid, had not yet been appointed as a warrant officer due to the accession directive and thus had standing. Add. 7. But plaintiffs failed to demonstrate that, even if this alleged injury were traceable to the directive, it was redressable by the court’s injunction, as there is no basis to think that Schmid would be able to satisfy the demands of the Carter policy. *See* Add. 50 (Schmid requires future medical treatment, including surgery).

The district court further erred in holding that the three other plaintiffs—Karnoski, D.L., and Callahan—had standing from a competitive disadvantage under the accession directive. Add. 7-8. But these plaintiffs have not even applied to access, let alone established that they would otherwise be eligible to enter the military, Add. 47, 58-59, 63, rendering any “threatened injury” far from “*certainly impending*.” *Clapper*, 568 U.S. at 409. Nor can they show that this alleged injury would be redressable by the injunction, as there is no claim that any of them could obtain the requisite certificate establishing 18 months’ stability post-treatment under the Carter policy. Add. 45, 50, 57, 62.<sup>4</sup>

Nor can the organizational plaintiffs or Washington State challenge the accession directive under Article III. As the district court recognized, the organizations’ standing turns on that of their members, so if Karnoski and Schmid cannot satisfy Article III, the organizations cannot either. Add. 10-11. Washington likewise has failed to show a cognizable injury traceable to the accession directive. The State’s claim that the President’s directive may harm its ability to recruit and retain members of the Washington National Guard is wholly speculative. Doc. 55 at 7 (directive “*may* result in diminished numbers of service members who can provide emergency response and

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<sup>4</sup>The district court also held that an alleged stigma-based injury was sufficient to confer standing on these four individual plaintiffs. Add. 8, 10. But stigmatic injury “accords a basis for standing only to those persons who are personally denied equal treatment,” *Allen v. Wright*, 468 U.S. 737, 750 (1984), which none of these plaintiffs has alleged.

disaster mitigation in emergent situations”) (emphasis added). Nor does its claimed *parens patriae* interest in protecting its residents from an allegedly discriminatory federal policy confer standing. See *Massachusetts v. Mellon*, 262 U.S. 447, 478, 485-86 (1923).

2. The district court also abused its discretion in weighing the equities—*i.e.*, the balance of hardships, the public interest, and the likelihood of irreparable harm—to conclude that a preliminary injunction was warranted. Even though “great deference” is owed “to the professional judgment of military authorities concerning the relative importance of a particular military interest” in weighing these factors, *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), the court significantly discounted the hardship to the military imposed by its injunction.

As military leadership has explained, compliance with the district court’s January 1 deadline “will impose extraordinary burdens” on the military and have a “harmful impact” on “its missions[] and readiness.” Add. 38-39. Despite the “implementation efforts made to date,” the military will “not be adequately and properly prepared to begin processing transgender applicants” by January 1. Add. 42. Specifically, it will have to ensure that the “tens of thousands” of service members “dispersed across the United States” responsible for implementing accession policies “have a working knowledge or in-depth medical understanding of the standards.” Add. 40. These service members include over 1,000 medical personnel, officers and providers; personnel at nine military entrance training locations; and 20,367 recruiters who assist applicants in completing their medical history forms. Add. 40-41. And their training

will be complicated, as “[n]o other accession standard has been implemented that presents such a multifaceted review of an applicant’s medical history” as the Carter policy. Add. 41. Thus, if the military is “compelled to execute transgender accessions by January 1,” then “applicants may not receive the appropriate medical and administrative accession screening necessary for someone with a complex medical condition” and thereby enter the military even though they are “not physically or psychologically equipped to engage in combat/operational service.” Add. 42.

The preliminary injunction further harms the military by forcing it to implement a significant change to its accession standards before it completes its study. Forcing the military to take some applicants it might have rejected had it been given more time to finish its study and implement a final policy is a substantial injury in itself, in addition to the fact that an erroneous accession decision as to an individual could adversely affect other unit members. *Id.* But beyond that, short-circuiting the deliberative process both undercuts the ongoing work of the leadership studying the issue and threatens the military with two burdensome implementation processes—one to comply with the district court’s order and another to execute a new policy (if the military adopts a new one following the study) or return to the old one (if the military adheres to its standards and the injunction is set aside on appeal). Add. 42-43. Imposing “duplicative” implementation costs, “sowing confusion in the ranks,” and mandating personnel policy while military experts are still studying the issue are all significant harms. Add.

43. And because these injuries—whether to the fisc or to the defense of the nation—will be passed on to citizens more generally, a stay would be in the public interest.

The district court dismissed any harm to the government on the basis of a fundamental misunderstanding of the status quo that its injunction sought to protect. According to the court, it was “not convinced that reverting to the June 2016 Policy, ... which had been in place for over a year without documented negative effects, will harm Defendants.” Add. 22. But the June 2016 Policy, insofar as it concerned accessions, *never* took effect. Instead, that revision to accession standards has been continually deferred since it was announced, and therefore was *not* the status quo. The fact that there were no negative effects from a policy that was never implemented is hardly a legitimate reason to discount the serious harms its implementation would sow.

Against those serious harms, plaintiffs cannot show any irreparable injury. The individual plaintiffs whom the court found to have standing have not alleged that a stay is likely to affect them during the pendency of the appeal, which is unsurprising given that none has claimed an ability to satisfy the 18 months’ stability requirement under the Carter policy. In any event, any potential employment-related harm is not irreparable. *See, e.g., Hartikka v. United States*, 754 F.2d. 1516, 1518 (9th Cir. 1985) (lost income, lost retirement and relocation pay, and damage to reputation resulting from a less-than-honorable discharge did not constitute irreparable harm). Finally, the district court cited abstract stigmatic injuries to plaintiffs, Add. 20, but such injuries fail to confer standing on plaintiffs, much less establish irreparable harm. *See supra* Part I.C.1.

**3.a.** On the merits of their equal protection challenge, the district court erred by failing to apply the appropriately deferential standard of review. Although the armed forces are subject to constitutional constraints, “the tests and limitations to be applied may differ because of the military context.” *Rostker v. Goldberg*, 453 U.S. 57, 67 (1981). For instance, judicial “review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society.” *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986). The same is true for “decisions as to the composition ... of a military force.” *Rostker*, 453 U.S. at 65. Thus, even when military regulations trigger heightened scrutiny, courts have upheld them in light of the significant deference due to the political branches’ judgments in this area. *See, e.g., id.* at 69–72 (excluding women from draft registration).

The accession directive easily survives this deferential form of review. Given the President’s concerns that departing from the military’s longstanding accession policy without “further study” risked, among other things, harm to “military effectiveness,” he ordered the armed forces to retain this standard while Secretary Mattis and his team conducted their own review of the issue. Add. 24-25 (Mem. §§ 1, 2(a)). A decision to maintain the status quo for several months while the military conducts an additional study of a policy change of this magnitude survives any standard of review. Indeed, Secretary Mattis made a similar decision in June 2017 by delaying the Carter policy until January 1, 2018, while the military continued to examine the issue, and neither the court below nor plaintiffs have ever suggested that his decision was unconstitutional.

The district court never grappled with this problem, other than to assume (incorrectly) that the current accession policy would necessarily remain. Add. 13. But even if that were true, the President’s directive would still be constitutional given the deference due his assessment as Commander in Chief that abandoning that policy could “hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources.” Add. 24 (Mem. § 1(a)); *see, e.g., Department of Navy v. Egan*, 484 U.S. 518, 529–30 (1988) (“courts have traditionally shown the utmost deference to Presidential responsibilities’ ... in military and national security affairs” (citation omitted)).

The district court reached a different judgment only because it incorrectly applied intermediate scrutiny without the deference traditionally afforded military decisions. It justified this approach on the ground that the President’s order lacked “evidence of considered reason or deliberation.” Add. 18. But this suggestion that the President’s concerns were baseless withers under scrutiny. The study underlying the Carter policy explicitly concluded that allowing transgender individuals to serve would limit deployability, impede readiness, and impose costs on the military; it simply dismissed these burdens as “negligible.” Doc. 46-2 at 60-63, 67, 90, 91. And the Carter policy itself implicitly acknowledged that gender dysphoria or gender transition could impede military readiness by requiring applicants to demonstrate that they had been stable or had avoided complications for an 18-month period. In other words, the key difference between the longstanding accession policy and the Carter policy is the scope of the exception to the presumptive ban on accession by transgender individuals. Under the

former, a transgender individual was presumptively disqualified absent a waiver. Under the latter, a transgender individual was presumptively disqualified absent a demonstration of stability or avoidance of complications for 18 months. Plaintiffs' objection here thus reduces to a preference for one exception over another; put differently, they disagree with where the military "has drawn the line." *Goldman*, 475 U.S. at 510. But such policy decisions as to how to best ensure that medical standards are met, and where to draw the appropriate line, are matters for military discretion.<sup>5</sup>

**b.** The district court further erred in concluding that plaintiffs established a likelihood of success on their substantive due process and First Amendment claims. Add. 18-19. Although the district court committed the same errors with respect to these claims as it did with the equal protection one, these theories fail for additional reasons. With respect to substantive due process, the district court suggested that plaintiffs have a fundamental liberty right "to make decisions concerning bodily integrity and self-definition central to an individual's liberty," and that the accession directive interferes with such a right "by depriving them of employment and career opportunities." Add. 18-19. But there is no fundamental liberty right to serve in the

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<sup>5</sup> Even if dispensing with deference were justified, the district court erred in applying intermediate scrutiny, *see, e.g., Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1227-28 (10th Cir. 2007) (heightened scrutiny does not apply to civilian classifications based on transgender status), and in ruling that the accession directive would unlikely survive even rational-basis review. In holding otherwise, the district court incorrectly relied on *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2002), which addressed a statutory claim rather than an equal protection one. *See* Add. 15-16. And if the accession directive can withstand intermediate scrutiny with deference, it can easily satisfy rational-basis review.

United States military. And contrary to the district court’s conclusion, Add. 19, the accession directive is not a content-based regulation on speech. That directive does not prohibit individuals from expressing their gender identity or restrict the content of speech in any way; it simply requires disclosure of certain medical information.

## **II. The Remaining Factors Favor A Stay.**

As explained, there is no basis for enforcing a preliminary injunction against the accession directive when none of the individual plaintiffs have even applied to access and, absent a stay, the government (and the public) will suffer irreparable harm. *See supra* Part I.C.2. That is particularly true where the district court misconstrued its injunction as preserving the status quo based on a misunderstanding that the Carter accession policy—which has never been implemented—had already “been in place for over a year.” Add. 22. Instead, the current accession policy—and the Secretary of Defense’s independent authority to defer revisions to that policy—is the status quo, and it has been for decades. Thus, the court’s injunction upends that state of affairs by compelling the military to dramatically alter its longstanding policy without sufficient time for either thorough study or proper implementation. This is precisely the kind of situation where a stay is warranted to allow for effective appellate review *before* such drastic changes must occur.

## CONCLUSION

The government respectfully requests that this Court enter an immediate administrative stay pending consideration of this motion or, as soon as possible, a stay pending appeal of the district court's preliminary injunction of enforcement of the accession directive.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Motion complies with the type-volume limitation of Fed. R. App. P. 27 because it contains 5,108 words. This Motion complies with the typeface and the type style requirements of Fed. R. App. P. 27 because this brief has been prepared in a proportionally spaced typeface using Word 14-point Garamond typeface.

s/ Catherine H. Dorsey  
Catherine H. Dorsey

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2017, I filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Catherine H. Dorsey  
Catherine H. Dorsey

No. 17-36009

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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RYAN KARNOSKI, et al.,  
Plaintiffs-Appellees,

v.

DONALD TRUMP, President of the United States, et al.  
Defendants-Appellants.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

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**ADDENDUM TO EMERGENCY MOTION  
FOR ADMINISTRATIVE STAY AND MOTION FOR STAY  
PENDING APPEAL**

---

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RYAN KARNOSKI, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

CASE NO. C17-1297-MJP

ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS

ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION

**INTRODUCTION**

THIS MATTER comes before the Court on Plaintiffs Ryan Karnoski, et al.'s Motion for Preliminary Injunction (Dkt. No. 32) and Defendants Donald J. Trump, et al.'s Motion to Dismiss (Dkt. No. 69). Plaintiffs challenge the constitutionality of Defendant President Donald J. Trump's Presidential Memorandum excluding transgender individuals from the military. Defendants respond that Plaintiffs lack standing, that their claims are neither properly plead nor ripe for review, and that they are not entitled to injunctive relief. Having reviewed the Motions (Dkt. Nos. 32, 69), the Responses (Dkt. Nos. 69, 84), the Replies (Dkt. Nos. 84, 90), and all related papers, and having considered the arguments made in proceedings before the Court, the

Court GRANTS in part and DENIES in part Defendants' Motion to Dismiss and GRANTS Plaintiffs' Motion for Preliminary Injunction.

### **ORDER SUMMARY**

On July 26, 2017, President Donald J. Trump announced on Twitter that “the United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. Military.” A Presidential Memorandum followed, directing the Secretaries of Defense and Homeland Security to “return” to the military’s policy authorizing the discharge of openly transgender service members (the “Retention Directive”); to prohibit the accession (bringing into service) of openly transgender individuals (the “Accession Directive”); and to prohibit the funding of certain surgical procedures for transgender service members (the “Medical Care Directive”). Plaintiffs filed this action challenging the constitutionality of the policy prohibiting military service by openly transgender individuals. Plaintiffs contend the policy violates their equal protection and due process rights and their rights under the First Amendment. Plaintiffs include transgender individuals currently serving in the military and seeking to join the military; the Human Rights Campaign, the Gender Justice League, and the American Military Partner Association; and the State of Washington. Plaintiffs have moved for a preliminary injunction to prevent implementation of the policy set forth in the Presidential Memorandum, and Defendants have moved to dismiss.

The Court finds that Plaintiffs have standing to bring this action, and that their claims for violation of equal protection, substantive due process, and the First Amendment are properly plead and ripe for resolution. The Court finds that Plaintiffs’ claim for violation of procedural due process is defective. The Court finds that the policy prohibiting openly transgender individuals from serving in the military is likely unconstitutional. Accordingly, the Court

GRANTS in part and DENIES in part Defendants’ Motion to Dismiss and GRANTS Plaintiffs’ Motion for Preliminary Injunction.

## BACKGROUND

### I. Presidential Memorandum and Interim Guidance

On July 26, 2017, President Donald J. Trump announced on Twitter that the United States government will no longer allow transgender individuals to serve in any capacity in the military. (Dkt. No. 34, Ex. 6.) President Trump’s announcement read as follows:



Thereafter, President Trump issued a memorandum (the “Presidential Memorandum”) directing the Secretaries of Defense and Homeland Security to “return” to the military’s policy authorizing the discharge of openly transgender service members (the “Retention Directive”); to prohibit the accession (bringing into service) of openly transgender individuals (the “Accession Directive”); and to prohibit the funding of certain surgical procedures for transgender service members (the “Medical Care Directive”). (*Id.* at §§ 1-3.) The Accession Directive takes effect on January 1, 2018; the Retention and Medical Care Directives take effect on March 23, 2018. (*Id.* at § 3.)

On September 14, 2017, Secretary of Defense James N. Mattis issued a memorandum providing interim guidance to the military (the “Interim Guidance”). (Dkt. No. 69, Ex. 1.) The Interim Guidance identified the intent of the Department of Defense (“DoD”) to “carry out the President’s policy and directives” and to identify “a plan to implement the policy and directives in the Presidential Memorandum.” (Id. at 2.) The Interim Guidance explained that transgender individuals would be prohibited from accession effective immediately. (Id. at 3.)

## **II. Policy on Transgender Service Members Prior to July 26, 2017**

Prior to President Trump’s announcement, the military concluded that transgender individuals should be permitted to serve openly and was in the process of implementing a policy to this effect (the “June 2016 Policy”). (Dkt. Nos. 32 at 9-10; 46 at ¶¶ 8-27; 48 at ¶¶ 8-36, Ex. C.) The June 2016 Policy was preceded by extensive research, including an independent study to evaluate the implications of military service by transgender individuals. (Dkt. Nos. 30 at ¶¶ 159-162; 32 at 9-10; 46 at ¶ 11.) This study concluded that allowing transgender individuals to serve would not negatively impact military effectiveness, readiness, or unit cohesion, and that the costs of providing transgender service members with transition-related healthcare would be “exceedingly small” compared with DoD’s overall healthcare expenditures. (Dkt. No. 32 at 30; 46 at ¶¶ 15-20.) After consulting with medical experts, personnel experts, readiness experts, commanders whose units included transgender service members, and others, the working group concluded that transgender individuals should be allowed to serve openly. (Dkt. Nos. 30 at ¶ 161; 46 at ¶ 10.) The Secretary of Defense issued a directive-type memorandum on June 30, 2016 affirming that “service in the United States military should be open to all who can meet the rigorous standards for military service and readiness,” including transgender individuals. (Dkt. No. 48, Ex. C.) The memorandum established procedures for accession, retention, in-service

transition, and medical coverage, and provided that “[e]ffective immediately, no otherwise qualified Service member may be involuntarily separated, discharged or denied reenlistment or continuation of service, solely on the basis of their gender identity.” (*Id.*) Relying upon the June 2016 Policy, transgender service members disclosed their transgender status to the military and were serving openly at the time of President Trump’s announcement. (See Dkt. Nos. 30 at ¶¶ 101-102, 112-114; 48 at ¶ 37.)

### III. Plaintiffs Challenge to the Presidential Memorandum

Plaintiffs challenge the constitutionality of the policy prohibiting military service by openly transgender individuals and seek declaratory and injunctive relief.<sup>1</sup> (Dkt. No. 30 at 39.) Plaintiffs contend the policy violates their equal protection and due process rights, and their rights under the First Amendment. (*Id.* at ¶¶ 214-238.)

Plaintiffs include nine individuals (the “Individual Plaintiffs”), three organizations (the “Organizational Plaintiffs”), and Washington State. (See *id.* at ¶¶ 7-18; Dkt. No. 101.) Plaintiffs Ryan Karnoski, D.L., and Connor Callahan seek to pursue a military career, and contend that the policy set forth in the Presidential Memorandum forecloses this opportunity. (Dkt. No. 30 at ¶¶ 38-49, 64-73, 130-139.) Plaintiffs Staff Sergeant Cathrine Schmid, Chief Warrant Officer Lindsey Muller, Petty Officer First Class Terece Lewis, Petty Officer Second Class Phillip Stephens, and Petty Officer Second Class Megan Winters currently serve openly in the military. (*Id.* at ¶¶ 50-63, 74-120.) Plaintiff Jane Doe currently serves in the military, but

<sup>1</sup> Plaintiffs’ suit is one of four lawsuits filed in response to President Trump’s policy prohibiting transgender individuals from serving openly. See *Doe 1 v. Trump*, No. 17-1597 (CKK) (D.D.C. filed Aug. 9, 2017); *Stone v. Trump*, No. MJG-17-2459 (D. Md. filed Aug. 8, 2017); *Stockman v. Trump*, No. 17-cv-1799-JGB-KK (C.D. Cal. filed Sept. 5, 2017). The District Courts for the Districts of Columbia and Maryland have issued preliminary injunctions suspending enforcement of the policy. See *Doe 1*, 2017 WL 4873042 (D.D.C. Oct. 30, 2017); *Stone*, 2017 WL 5589122 (D. Md. Nov. 21, 2017).

does not serve openly. (Id. at ¶¶ 121-129.) The Human Rights Campaign (“HRC”), the Gender Justice League (“GJL”), and the American Military Partner Association (“AMPA”) join as Organizational Plaintiffs. (Id. at ¶¶ 140-145.) After the Individual and Organization Plaintiffs filed this action, Washington State moved to intervene to protect its sovereign and quasi-sovereign interests, which it alleged were harmed by the policy set forth in the Presidential Memorandum. (Dkt. No. 55; see also Dkt. No. 97.) On November 27, 2017, the Court granted Washington State’s motion. (Dkt. No. 101.) Washington State now joins in Plaintiffs’ Motion for Preliminary Injunction based upon its interests in protecting “the health, and physical and economic well-being of its residents” and “securing residents from the harmful effects of discrimination.” (Id. at 4.) Defendants include President Donald J. Trump, Secretary James N. Mattis, the United States, and the DoD. (Dkt. No. 30 at ¶¶ 19-22.)

## **DISCUSSION**

### **I. Motion to Dismiss**

Defendants move to dismiss Plaintiffs’ Amended Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (See Dkt. No. 69 at 16-22.) The Court finds that Plaintiffs have standing to challenge the Presidential Memorandum and have stated valid claims upon which relief may be granted. However, Plaintiffs have failed to state a valid claim for violation of procedural due process. The Court therefore DENIES Defendants’ Motion to Dismiss as to Plaintiffs’ equal protection, substantive due process, and First Amendment claims; and GRANTS Defendants’ Motion to Dismiss as to Plaintiffs’ procedural due process claim.

#### **A. Rule 12(b)(1)**

Defendants move to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Defendants contend the Court lacks subject matter jurisdiction for two

reasons: First, they contend Plaintiffs lack standing because they have not suffered injuries in fact. (Id. at 18-20.) Second, they contend Plaintiffs’ claims are not ripe for resolution. (Id. at 20-22.) Plaintiffs respond that the Presidential Memorandum gives rise to current harm and credible threats of impending harm sufficient for both standing and ripeness. (See Dkt. No. 84 at 11-27.)

**i. Individual Plaintiffs**

The Court finds that the Individual Plaintiffs have standing to challenge the Presidential Memorandum. To establish standing, Individual Plaintiffs must demonstrate: (1) an “injury in fact”; (2) a causal connection between the injury and the conduct complained of; and (3) that it is likely their injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). “At the preliminary injunction stage, a plaintiff must make a ‘clear showing’ of his injury in fact.” Lopez v. Candaele, 630 F.3d 775, 785 (9th Cir. 2010) (quoting Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22 (2008)). An “injury in fact” exists where there is an invasion of a legally protected interest that is both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” Lujan, 504 U.S. at 560 (internal quotation marks and citations omitted).

Each of the Individual Plaintiffs satisfies these requirements: As a result of the Retention Directive, Plaintiffs Schmid, Muller, Lewis, Stephens, Winters, and Doe face a credible threat of discharge. (See Dkt. No. 84 at 14-15.) As a result of the Accession Directive, Plaintiff Schmid has been refused consideration for appointment as a warrant officer and faces a credible threat of being denied opportunities for career advancement. (See Dkt. Nos. 36 at ¶¶ 28-30; 70 at ¶ 3.) Plaintiffs Karnoski, D.L., and Callahan also face a credible threat of being denied opportunities to compete for accession on equal footing with non-

transgender individuals. (See Dkt. Nos. 35 at ¶¶ 16-22; 37 at ¶¶ 3-16; 42 at ¶¶ 3-5, 10-21; see also Doe 1, 2017 WL 4873042, at \*18-19 (finding the Accession and Retention Directives impose competitive barriers on transgender individuals who intend to accede). As a result of the Medical Care Directive, Plaintiff Stephens faces a credible threat of being denied surgical treatment, as he is currently ineligible for surgery until after March 23, 2018, the date upon which DoD is to cease funding of transition-related surgical procedures.<sup>2</sup> (Dkt. Nos. 30 at ¶ 102; 34, Ex. 7 at § 3; 40 at ¶ 14.)

In addition to these threatened harms, the Individual Plaintiffs face current harms in the form of stigmatization and impairment of free expression. The policy set forth in the Presidential Memorandum currently denies Individual Plaintiffs the opportunity to serve in the military on the same terms as other service members, deprives them of dignity, and subjects them to stigmatization. (Dkt. No. 30 at ¶¶ 217, 222, 238.) Policies that “stigmatiz[e] members of the disfavored group as ‘innately inferior’ . . . can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.” Heckler v. Mathews, 465 U.S. 728, 737-740 (1984). The Presidential Memorandum currently impairs Plaintiff Jane Doe’s rights to express her authentic gender identity, as she fears discharge from the military as a result. (Dkt. No. 33 at ¶¶ 3-15.) Plaintiff Doe’s self-censorship is a “constitutionally sufficient injury,” as it is based on her “actual and well-founded fear” that the Retention Directive will take effect. See Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1093 (9th Cir. 2003) (“an actual and well-founded fear that [a] law

<sup>2</sup> While the Medical Care Directive includes an exception where necessary “to protect the health of an individual who has already begun a course of treatment to reassign his or her sex” (Dkt. No. 34, Ex. 7 at § 2), the exception does not apply to Plaintiff Stephens and does not diminish the threat of harm he faces. (Dkt. No. 40 at ¶ 14.)

will be enforced against [him or her]” may create standing to bring pre-enforcement claims based on the First Amendment) (quoting Virginia v. Am. Booksellers Ass’n, 484 U.S. 383, 393 (1988)).

Each of Defendants’ arguments to the contrary is unavailing. First, Defendants claim the harms facing Plaintiffs are not certain, as the Presidential Memorandum directs “further study before the military changes its longstanding policies regarding service by transgender individuals.” (See Dkt. No. 69 at 18.) However, the Accession Directive is already in place, and the restrictions set forth in the Medical Care Directive are final and will be implemented on March 23, 2018. (See Dkt. No. 34, Ex. 7 at § 3.) The Court finds that “[t]he directives of the Presidential Memorandum, to the extent they are definitive, are the operative policy toward military service by transgender service members.” Doe 1, 2017 WL 4873042, at \*17. Similarly, the Court reads the Interim Guidance “as implementing the directives of the Presidential Memorandum,” and concludes that “any protections afforded by the Interim Guidance are necessarily limited to the extent they conflict with the express directives of the memorandum.”

Id.

Second, Defendants claim Plaintiffs Karnoski, D.L., and Callahan have not suffered injury in fact as they have yet to enlist in the military. (Dkt. No. 69 at 19.) However, as a result of the Accession Directive, Plaintiffs Karnoski, D.L., and Callahan cannot compete for accession on equal footing with non-transgender individuals. Denial of this opportunity constitutes injury in fact. See Int’l Brotherhood of Teamsters v. United States, 431 U.S. 324, 365-66 (1977) (“When a person’s desire for a job is not translated into a formal application solely because of his

unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application.”).<sup>3</sup>

Third, Defendants rely on Allen v. Wright, 468 U.S. 737 (1984) to claim that Plaintiffs have not suffered stigmatic injury. (Dkt. No. 69 at 18.) But unlike the claimants in Allen, who raised abstract instances of stigmatic injury only, the Individual Plaintiffs have identified concrete interests in accession, career advancement, and medical treatment, and have demonstrated that they are “‘personally denied equal treatment’ by the challenged discriminatory conduct.” Allen, 468 U.S. at 755 (quoting Heckler, 465 U.S. at 739-40). Such stigmatic injury is “one of the most serious consequences of discriminatory government action and is sufficient in some circumstances to support standing.” Id.<sup>4</sup>

## ii. *Organizational Plaintiffs*

The Court finds that Organizational Plaintiffs HRC, GJL, and AMPA have standing to challenge the Presidential Memorandum. An organization has standing where “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” Hunt v. Wash. State Apple Adver. Comm’n, 432 U.S. 333, 343 (1977). Each of the Organizational Plaintiffs satisfies these requirements. Individual Plaintiffs Karnoski and Schmid are members of HRC, GJL, and

<sup>3</sup> Defendants’ claim that Plaintiffs Karnoski and D.L. would not be able to accede under the June 2016 Policy because they have recently taken steps to transition does not compel a different finding. Plaintiffs’ injury “lies in the denial of an equal *opportunity* to compete, not the denial of the job itself,” and thus the Court does not “inquire into the plaintiffs’ qualifications (or lack thereof) when assessing standing.” Shea v. Kerry, 796 F.3d 42, 50 (D.C. Cir. 2015) (citing Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 280-81 & n.14 (1978) (emphasis in original)).

<sup>4</sup> Allen addressed racial discrimination specifically. However, the Supreme Court has also acknowledged stigmatic injury arising from gender-based discrimination. See Heckler, 465 U.S. at 737-40.

AMPA, and Individual Plaintiffs Muller, Stephens, and Winters are also members of AMPA. (See Dkt. No. 30 at ¶¶ 141-145.) The interests each Organizational Plaintiff seeks to protect are germane to their organizational purposes, which include ending discrimination against LGBTQ individuals (HRC and GJL) and supporting families and allies of LGBT service members and veterans (AMPA). (*Id.* at ¶¶ 16-18.) As Plaintiffs seek injunctive and declaratory relief, participation by the organizations' individual members is not required. See Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity, 950 F.2d 1401, 1408 (9th Cir. 1991) (participation of individual members not required where “the claims proffered and relief requested [by an organization] do not demand individualized proof on the part of its members”).

### iii. *Washington State*

The Court finds that Washington State has standing to challenge the Presidential Memorandum. A state has standing to sue the federal government to vindicate its sovereign and quasi-sovereign interests. See Massachusetts v. E.P.A., 549 U.S. 497, 518-520 (2007). Sovereign interests include a state's interest in protecting the natural resources within its boundaries. *Id.* at 518-519. Quasi-sovereign interests include a state's interest in the health and physical and economic well-being of its residents, and in “securing residents from the harmful effects of discrimination.” Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez, 458 U.S. 592, 607, 609 (1982). Washington State is home to approximately 45,000 active duty service members and approximately 32,850 transgender adults. (Dkt. No. 97 at 6.) The Washington National Guard is comprised of service members who assist with emergency preparedness and disaster recovery planning, including protecting Washington State's natural resources from wildfires, landslides, flooding, and earthquakes. (*Id.* at 8.) Washington State contends that prohibiting transgender individuals from serving openly adversely impacts its ability to recruit

and retain members of the Washington National Guard, and thereby impairs its ability to protect its territory and natural resources. (Id.) Additionally, Washington State contends that the prohibition implicates its interest in maintaining and enforcing its anti-discrimination laws, protecting its residents from discrimination, and ensuring that employment and advancement opportunities are not unlawfully restricted based on transgender status. (Id. at 8-9.) The Court agrees.

The injuries to the Individual Plaintiffs, the Organizational Plaintiffs, and to Washington State are indisputably traceable to the policy set forth in the Presidential Memorandum, and may be redressed by a favorable ruling from this Court. Therefore, the Court DENIES Defendants' Motion to Dismiss for lack of standing.

#### **iv. Ripeness**

The Court finds that Plaintiffs' claims are ripe for review. Ripeness "ensure[s] that courts adjudicate live cases or controversies" and do not "issue advisory opinions [or] declare rights in hypothetical cases." Bishop Paiute Tribe v. Inyo Cnty., 863 F.3d 1144, 1153 (9th Cir. 2017) (citation omitted). "A proper ripeness inquiry contains a constitutional and a prudential component." Id. (citation omitted). Because Plaintiffs have standing to challenge the Presidential Memorandum, their claims satisfy the requirement for constitutional ripeness. See id. (constitutional ripeness "is often treated under the rubric of standing"). Because they raise purely legal issues (i.e., whether the Presidential Memorandum violates their constitutional rights), and because withholding consideration of these issues will subject Plaintiffs to hardships (i.e., denial of career opportunities and transition-related medical care, stigmatic injury, and impairment of self-expression), they also satisfy the requirement for prudential ripeness. See id. at 1154 (prudential ripeness is "guided by two overarching considerations: the fitness of the

issues for judicial decision and the hardship to the parties of withholding court consideration.”) (citation and internal quotation marks omitted).

Defendants claim this case is not ripe for resolution because the policy on military service by transgender individuals is “still being studied, developed, and implemented.” (Dkt. No. 69 at 20.) However, President Trump’s announcement on Twitter and his Presidential Memorandum did not order a study, but instead unilaterally proclaimed a prohibition on transgender service members. See Stone, 2017 WL 5589122, at \*10 (“The Court cannot interpret the plain text of the President’s Memorandum as being a request for a study to determine whether or not the directives should be implemented. Rather, it orders the directives to be implemented by specified dates.”). Defendants’ contention that Plaintiffs must first exhaust administrative remedies before the Court can consider their claims is also unavailing, as the Ninth Circuit has explained that “[r]esolving a claim founded solely upon a constitutional right is singularly suited to a judicial forum and clearly inappropriate to an administrative board.” Downen v. Warner, 481 F.2d 642, 643 (9th Cir. 1973).

Therefore, the Court DENIES Defendants’ Motion to Dismiss for lack of subject matter jurisdiction.

#### **B. Rule 12(b)(6)**

To survive a motion to dismiss for failure to state a claim upon which relief can be granted, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This requirement is met where the complaint “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. The complaint need not include detailed

allegations, but it must have “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555. In evaluating a motion under Rule 12(b)(6), the Court accepts all facts alleged in the complaint as true, and makes all inferences in the light most favorable to the non-movant. Barker v. Riverside Cnty. Office of Educ., 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).

The Court finds that Plaintiffs’ Amended Complaint states valid claims for violation of equal protection, substantive due process, and the First Amendment. Plaintiffs have established a likelihood of success on the merits with regard to each of these claims (see discussion of Plaintiffs’ Motion for Preliminary Injunction, infra), and for the same reasons, these claims survive under Rule 12(b)(6). However, the Court finds that Plaintiffs’ Amended Complaint fails to state a valid claim for violation of procedural due process. Plaintiffs’ Amended Complaint alleges neither a “protectible liberty or property interest” nor a “denial of adequate procedural protections” as required for a procedural due process claim. (See Dkt. No. 30 at ¶¶ 225-230; Sanchez v. City of Fresno, 914 F. Supp. 2d 1079, 1103 (9th Cir. 2012).)<sup>5</sup>

Therefore, the Court DENIES Defendants’ Motion to Dismiss with respect to Plaintiffs’ equal protection, substantive due process and First Amendment claims, and GRANTS Defendants’ Motion to Dismiss with respect to Plaintiffs’ procedural due process claim.

## **II. Motion for Preliminary Injunction**

The Court finds that Plaintiffs are entitled to a preliminary injunction to preserve the status quo that existed prior to the change in policy announced by President Trump on Twitter and in his Presidential Memorandum. The Court considers four factors in evaluating Plaintiffs’

<sup>5</sup> The Court notes that the procedural due process claim is elaborated upon in detail in Plaintiffs’ Motion for Preliminary Injunction and Reply. (See Dkt. Nos. 32 at 22-23; 84 at 39-40.)

request for a preliminary injunction: (1) the likelihood of success on the merits; (2) the likelihood of irreparable harm in the absence of an injunction; (3) the balance of equities; and (4) the public interest. Winter, 555 U.S. at 20. “When the government is a party, these last two factors merge.” Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing Nken v. Holder, 556 U.S. 418, 435 (2009)).

#### **A. Likelihood of Success on the Merits**

The Court finds that Plaintiffs have established a likelihood of success on the merits of their equal protection, substantive due process, and First Amendment claims.

##### **i. Equal Protection**

Plaintiffs have established a likelihood of success on the merits of their equal protection challenge. The Equal Protection Clause prohibits government action “denying to any person the equal protection of the laws.” United States v. Windsor, 133 S. Ct. 2675, 2695 (2013). Plaintiffs contend the policy set forth in the Presidential Memorandum denies them equal protection in that it impermissibly classifies individuals based on transgender status and gender identity and is not substantially related to an important government interest. (Dkt. No. 30 at ¶¶ 217-224.)

The Court must first determine whether the policy burdens “a ‘suspect’ or ‘quasi-suspect’ class.” See Ball v. Massanari, 254 F.3d 817, 823 (9th Cir. 2001). The Court concludes that the policy distinguishes on the basis of transgender status, a quasi-suspect classification, and is therefore subject to intermediate scrutiny. See id. (noting that gender is a quasi-suspect classification); Schwenk v. Hartford, 204 F.3d 1187, 1201-02 (9th Cir. 2000) (noting that discrimination based on a person’s failure “to conform to socially-constructed

gender expectations” is a form of gender discrimination) (citing Price Waterhouse v. Hopkins, 490 U.S. 228, 240 (1989)).<sup>6</sup>

Next, the Court must determine whether the policy satisfies intermediate scrutiny. Id. A policy subject to intermediate scrutiny must be supported by an “exceedingly persuasive justification.” United States v. Virginia, 518 U.S. 515, 531 (1996). The policy must serve important governmental objectives, and the government must show “that the discriminatory means employed are substantially related to the achievement of those objectives.” Id. at 533 (citation omitted). While Defendants identify important governmental interests including military effectiveness, unit cohesion, and preservation of military resources, they fail to show that the policy prohibiting transgender individuals from serving openly is related to the achievement of those interests. (See Dkt. No. 69 at 33-35.) Indeed, “all of the reasons proffered by the President for excluding transgender individuals from the military [are] not merely unsupported, but [are] actually *contradicted* by the studies, conclusions, and judgment of the military itself.” Doe 1, 2017 WL 4873042, at \*30 (emphasis in original). Not only did the DoD previously conclude that allowing transgender individuals to serve openly would not impact military effectiveness and readiness, the working group tasked to evaluate the issue also concluded that *prohibiting* open service would have negative impacts including loss of qualified personnel, erosion of unit cohesion, and erosion of trust in command. (See Dkt. Nos. 46 at ¶¶ 25-26; 48 at ¶¶ 45-47.)

Defendants’ arguments to the contrary are unavailing. While Defendants raise concerns about transition-related medical conditions and costs, their concerns “appear to be hypothetical

<sup>6</sup> The June 2016 Policy also stated it was DoD’s position “consistent with the U.S. Attorney General’s opinion, that discrimination based on gender identity is a form of sex discrimination.” (See Dkt. No. 48, Ex. C at 6.)

and extremely overbroad.” Doe 1, 2017 WL 4873042, at \*29. For instance, Defendants claim that “at least some transgender individuals suffer from medical conditions that could impede the performance of their duties,” including gender dysphoria, and complications from hormone therapy and sex reassignment surgery. (See Dkt. No. 69 at 33-34.) But *all* service members might suffer from medical conditions that could impede performance, and indeed the working group found that it is common for service members to be non-deployable for periods of time due to an array of such conditions. (Dkt. No. 46 at ¶ 22.) Defendants claim that accommodating transgender service members would “impose costs on the military.” (Dkt. No. 69 at 34.) But the study preceding the June 2016 Policy indicates that these costs are exceedingly minimal. (Dkt. Nos. 48, Ex. B at 57 (“[E]ven in the most extreme scenario . . . we expect only a 0.13-percent (\$8.4 million out of \$6.2 billion) increase in [active component] health care spending.”); 48 at ¶ 41 (“[T]he maximum financial impact . . . is an amount so small it was considered to be ‘budget dust,’ hardly even a rounding error, by military leadership.”).) Indeed, the cost to discharge transgender service members is estimated to be *more than 100 times greater* than the cost to provide transition-related healthcare. (See Dkt. Nos. 32 at 20; 46 at ¶ 32; 48 at ¶ 18.)

Defendants’ claim that the policy prohibiting transgender individuals from serving openly is entitled to substantial deference is also unavailing. (See Dkt. No. 69 at 29.) Defendants rely on Rostker v. Goldberg, 453 U.S. 57 (1981). In Rostker the Supreme Court considered whether the Military Selective Service Act (“MSSA”), which compelled draft registration for men only, was unconstitutional. Id. at 59. Finding that the MSSA was enacted after extensive review of legislative testimony, floor debates, and committee reports, the Supreme Court held that Congress was entitled to deference when, in “exercising the

congressional authority to raise and support armies and make rules for their governance,” it does not act “unthinkingly” or “reflexively and not for any considered reason.” See id. at 71-72. In contrast, the prohibition on military service by transgender individuals was announced by President Trump on Twitter, abruptly and without any evidence of considered reason or deliberation. (See Dkt. No. 30 at ¶¶ 172-184.) The policy is therefore not entitled to Rostker deference.<sup>7</sup>

Because Defendants have failed to demonstrate that the policy prohibiting transgender individuals from serving openly is substantially related to important government interests, it does not survive intermediate scrutiny.<sup>8</sup> Plaintiffs are therefore likely to succeed on the merits of their equal protection claim.

## ii. *Substantive Due Process*<sup>9</sup>

The Court finds that Plaintiffs have established a likelihood of success on the merits of their substantive due process challenge. Substantive due process protects fundamental liberty interests in individual dignity, autonomy, and privacy from unwarranted government intrusion. See U.S. Const., amend. V. These fundamental interests include the right to make decisions concerning bodily integrity and self-definition central to an individual’s identity. See Obergefell v. Hodges, 135 S. Ct. 2584, 2584 (2015) (“The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons . . . to define and express

<sup>7</sup> Defendants’ reliance on Goldman v. Weinberger, 475 U.S. 503 (1986), is also misplaced. See Doe 1, 2017 WL 4873042, at \*30 n.11 (distinguishing the policy at issue in Weinberger as having been “based on the ‘considered professional judgment’” of the military).

<sup>8</sup> For the same reasons, the policy is also unlikely to survive rational basis review.

<sup>9</sup> Having granted Defendants’ Motion to Dismiss with regard to Plaintiffs’ procedural due process challenge, the Court does not reach the merits of that claim at this time.

their identity.”); see also Roberts v. U.S. Jaycees, 468 U.S. 609, 619 (1984) (due process “safeguards the ability independently to define one’s identity that is central to any concept of liberty”). To succeed on their substantive due process challenge, Plaintiffs must establish a governmental intrusion upon a fundamental liberty interest. The Court concludes that the policy set forth in the Presidential Memorandum constitutes such an intrusion. The policy directly interferes with Plaintiffs’ ability to define and express their gender identity, and penalizes Plaintiffs for exercising their fundamental right to do so openly by depriving them of employment and career opportunities. As discussed in the context of Plaintiffs’ equal protection challenge, supra, Defendants have not demonstrated that this intrusion is necessary to further an important government interest. Plaintiffs are therefore likely to succeed on the merits of their substantive due process challenge.

### **iii. First Amendment**

The Court finds that Plaintiffs have established a likelihood of success on the merits of their First Amendment challenge. In general, laws that regulate speech based on its content (i.e., because of “the topic discussed or the idea or message expressed”) are presumptively unconstitutional and subject to strict scrutiny. Reed v. Town of Gilbert, Ariz., 135 S. Ct. 2218, 2226-27 (2015). Military regulations on speech are permitted so long as they “restrict speech no more than is reasonably necessary to protect the substantial governmental interest.” Brown v. Glines, 444 U.S. 348, 355 (1980).

Plaintiffs contend the policy set forth in the Presidential Memorandum impermissibly burdens “speech or conduct that ‘openly’ discloses a transgender individual’s identity or transgender status” by subjecting openly transgender individuals to discharge and other adverse actions. (See Dkt. No. 30 at ¶¶ 196-197, 234-236.) The Court agrees. The policy penalizes

transgender service members—but not others—for disclosing their gender identity, and is therefore a content-based restriction. Even giving the government the benefit of a more deferential standard of review under Brown, 444 U.S. at 355, the policy does not survive. As discussed in the context of Plaintiffs’ equal protection challenge, supra, Defendants have not demonstrated that the intrusion upon protected expression furthers an important government interest.

### **B. Irreparable Harm**

The Court finds that Plaintiffs are likely to suffer irreparable harm if an injunction does not issue. The Individual and Organizational Plaintiffs have demonstrated a likelihood of irreparable harm in the form of current and threatened injuries in fact, including denial of career opportunities and transition-related medical care, stigmatic injury, and impairment of self-expression. While Defendants claim these harms can be remedied with money damages (Dkt. No. 69 at 23-24), they are incorrect. Unlike the plaintiffs in Anderson v. United States, 612 F.2d 1112 (9th Cir. 1979) and Hartikka v. United States, 754 F.2d 1516 (9th Cir. 1985), who alleged harms "common to most discharged employees" (e.g., loss of income, loss of retirement, loss of relocation pay, and damage to reputation) and not “attributable to any unusual actions relating to the discharge itself,” Hartikka, 754 F.2d at 1518, the harms facing the Individual Plaintiffs are directly attributable to the policy set forth in the Presidential Memorandum. Back pay and other monetary damages proposed by Defendants will not remedy the stigmatic injury caused by the policy, reverse the disruption of trust between service members, nor cure the medical harms caused by the denial of timely health care. (See Dkt. No. 84 at 28.) Moreover, to the extent Plaintiffs are likely to succeed on the merits of their constitutional claims, these violations are yet another form of irreparable harm. See

Associated Gen. Contractors, 950 F.2d at 1412 (“alleged constitutional infringement will often alone constitute irreparable harm.”) (citation omitted); see also Klein v. City of San Clemente, 584 F.3d 1196, 1207-08 (9th Cir. 2009) (“loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury”) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)).

Plaintiff Washington State has demonstrated a likelihood of irreparable harm to its sovereign and quasi-sovereign interests if it is “forced to continue to expend its scarce resources to support a discriminatory policy when it provides funding or deploys its National Guard.” (See Dkt. No. 97 at 8-9.) Washington State has also demonstrated that its ability to recruit and retain service personnel for the Washington National Guard may be irreparably harmed. See Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc., 944 F.2d 597, 603 (9th Cir. 1991) (“intangible injuries, such as damage to ongoing recruitment efforts and goodwill, qualify as irreparable harm.”).

### **C. Balance of Equities and Public Interest**

The Court finds that the balance of equities and the public interest are in Plaintiffs’ favor. If a preliminary injunction does not issue, Plaintiffs will continue to suffer injuries as a result of the Presidential Memorandum, including deprivation of their constitutional rights. On the other hand, Defendants will face no serious injustice in maintaining the June 2016 Policy pending resolution of this action on the merits. Defendants claim they are in the process of “gathering a panel of experts” to study the military’s policy on transgender service members and assert, without explanation, that an injunction will “directly interfere with the panel’s work and the military’s ability to thoroughly study a complex and important issue regarding the composition of the armed forces.” (Dkt. No. 69 at 40.) The Court is not convinced that

reverting to the June 2016 Policy, which was voluntarily adopted by DoD after extensive study and review, and which has been in place for over a year without documented negative effects, will harm Defendants. See Doe 1, 2017 WL 4873042, at \*33 (recognizing “considerable evidence that it is the *discharge* and *banning* of [transgender] individuals that would have such [negative] effects . . . .”) (emphasis in original).

Injunctive relief furthers the public interest as it “is always in the public interest to prevent the violation of a party’s constitutional rights.” Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (citations omitted). Defendants’ contention that the public has a strong interest in national defense does not change this analysis, as “[a] bare invocation of ‘national defense’ simply cannot defeat every motion for preliminary injunction that touches on the military.” Doe 1, 2017 WL 4873042, at \*33; Stone, 2017 WL 5589122, at \*16.

### CONCLUSION

Plaintiffs have standing to bring this lawsuit challenging Defendants’ policy of prohibiting transgender individuals from serving openly in the military. Plaintiffs’ claims for violations of equal protection, substantive due process, and the First Amendment are properly plead and ripe for resolution, and Plaintiffs are entitled to a preliminary injunction to protect the status quo with regard to each of these claims. Plaintiffs have not properly plead a claim for violation of procedural due process. Therefore, the Court rules as follows:

1. The Court GRANTS Defendants’ Motion to Dismiss with respect to Plaintiffs’ procedural due process claim;
2. The Court DENIES Defendants’ Motion to Dismiss with respect to Plaintiffs’ equal protection, substantive due process, and First Amendment claims;

3. The Court GRANTS Plaintiffs' Motion for a Preliminary Injunction, and hereby enjoins Defendants and their officers, agents, servants, employees, and attorneys, and any other person or entity subject to their control or acting directly or indirectly in concert or participation with Defendants from taking any action relative to transgender individuals that is inconsistent with the status quo that existed prior to President Trump's July 26, 2017 announcement. This Preliminary Injunction shall take effect immediately and shall remain in effect pending resolution of this action on the merits or further order of this Court.

The clerk is ordered to provide copies of this order to all counsel.

Dated December 11, 2017.



Marsha J. Pechman  
United States District Judge

THE WHITE HOUSE

WASHINGTON

August 25, 2017

MEMORANDUM FOR THE SECRETARY OF DEFENSE  
THE SECRETARY OF HOMELAND SECURITY

SUBJECT: Military Service by Transgender Individuals

Section 1. Policy. (a) Until June 2016, the Department of Defense (DoD) and the Department of Homeland Security (DHS) (collectively, the Departments) generally prohibited openly transgender individuals from accession into the United States military and authorized the discharge of such individuals. Shortly before President Obama left office, however, his Administration dismantled the Departments' established framework by permitting transgender individuals to serve openly in the military, authorizing the use of the Departments' resources to fund sex-reassignment surgical procedures, and permitting accession of such individuals after July 1, 2017. The Secretary of Defense and the Secretary of Homeland Security have since extended the deadline to alter the currently effective accession policy to January 1, 2018, while the Departments continue to study the issue.

In my judgment, the previous Administration failed to identify a sufficient basis to conclude that terminating the Departments' longstanding policy and practice would not hinder military effectiveness and lethality, disrupt unit cohesion, or tax military resources, and there remain meaningful concerns that further study is needed to ensure that continued implementation of last year's policy change would not have those negative effects.

(b) Accordingly, by the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States under the Constitution and the laws of the United States of America, including Article II of the Constitution, I am directing the Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016 until such time as a sufficient basis exists

upon which to conclude that terminating that policy and practice would not have the negative effects discussed above. The Secretary of Defense, after consulting with the Secretary of Homeland Security, may advise me at any time, in writing, that a change to this policy is warranted.

Sec. 2. Directives. The Secretary of Defense, and the Secretary of Homeland Security with respect to the U.S. Coast Guard, shall:

(a) maintain the currently effective policy regarding accession of transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing; and

(b) halt all use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.

Sec. 3. Effective Dates and Implementation. Section 2(a) of this memorandum shall take effect on January 1, 2018. Sections 1(b) and 2(b) of this memorandum shall take effect on March 23, 2018. By February 21, 2018, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall submit to me a plan for implementing both the general policy set forth in section 1(b) of this memorandum and the specific directives set forth in section 2 of this memorandum. The implementation plan shall adhere to the determinations of the Secretary of Defense, made in consultation with the Secretary of Homeland Security, as to what steps are appropriate and consistent with military effectiveness and lethality, budgetary constraints, and applicable law. As part of the implementation plan, the Secretary of Defense, in consultation with the Secretary of Homeland Security, shall determine how to address transgender individuals currently serving in the United States military. Until the Secretary has made that determination, no action may be taken against such individuals under the policy set forth in section 1(b) of this memorandum.

Sec. 4. Severability. If any provision of this memorandum, or the application of any provision of this memorandum, is held to be invalid, the remainder of this

memorandum and other dissimilar applications of the provision shall not be affected.

Sec. 5. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

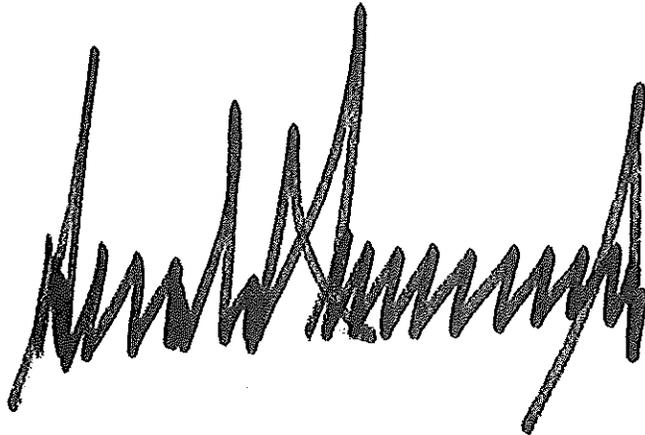
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

A large, stylized handwritten signature in black ink, appearing to be the signature of the Secretary of Defense, is centered on the page below the text.



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

9/14/17

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
COMMANDANT, U.S. COAST GUARD  
DEPUTY CHIEF MANAGEMENT OFFICER  
CHIEF, NATIONAL GUARD BUREAU  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR OF COST ASSESSMENT AND PROGRAM  
EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR OF OPERATIONAL TEST AND EVALUATION  
CHIEF INFORMATION OFFICER OF THE DEPARTMENT OF  
DEFENSE  
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE  
AFFAIRS  
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC  
AFFAIRS  
DIRECTOR OF NET ASSESSMENT  
DIRECTOR, STRATEGIC CAPABILITIES OFFICE  
DIRECTORS OF DEFENSE AGENCIES  
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Military Service by Transgender Individuals - Interim Guidance

The Department of Defense (“DoD”) has received the Presidential Memorandum, *Military Service by Transgender Individuals*, dated August 25, 2017 (“Presidential Memorandum”). DoD will carry out the President’s policy and directives in consultation with the Department of Homeland Security (“DHS”) with respect to the U.S. Coast Guard. Not later than February 21, 2018, I will present the President with a plan to implement the policy and directives in the Presidential Memorandum. Consistent with military effectiveness and lethality, budgetary constraints, and applicable law, the implementation plan will establish the policy, standards and procedures for transgender individuals serving in the military. The Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff, supported by a panel of experts (“Panel”), shall propose for my consideration recommendations supported by appropriate evidence and information.

To comply with the Presidential Memorandum, ensure the continued combat readiness of the force, and maximize flexibility in the development of the implementation plan, the attached Interim Guidance takes effect immediately and will remain in effect until I promulgate DoD’s final policy in this matter. By agreement with the Acting Secretary of Homeland Security, this Interim Guidance also applies to the U.S. Coast Guard.

Attachment:  
As stated

cc:  
Secretary of Homeland Security



### Interim Guidance

First and foremost, we will continue to treat every Service member with dignity and respect.

*Accessions:* The procedures set forth in Department of Defense Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, dated April 28, 2010 (Change 1), which generally prohibit the accession of transgender individuals into the Military Services, remain in effect because current or history of gender dysphoria or gender transition does not meet medical standards, subject to the normal waiver process.

*Medical Care and Treatment:* Service members who receive a gender dysphoria diagnosis from a military medical provider will be provided treatment for the diagnosed medical condition. As directed by the Memorandum, no new sex reassignment surgical procedures for military personnel will be permitted after March 22, 2018, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex.

*In-Service Transition for Transgender Service Members:* The policies and procedures set forth in DoDI 1300.28, *In-Service Transition for Transgender Service Members*, dated July 1, 2016, remain in effect until I promulgate DoD's final guidance in this matter.

#### *Separation and Retention of Transgender Service members:*

Service members who have completed their gender transition process and whose gender marker has been changed in DEERS will continue to serve in their preferred gender while this Interim Guidance remains in effect.

An otherwise qualified transgender Service member whose term of service expires while this Interim Guidance remains in effect, *may*, at the Service member's request, be re-enlisted in service under existing procedures.

As directed by the Memorandum, no action may be taken to involuntarily separate or discharge an otherwise qualified Service member solely on the basis of a gender dysphoria diagnosis or transgender status. Transgender Service members are subject to the same standards as any other Service member of the same gender; they may be separated or discharged under existing bases and processes, but not on the basis of a gender dysphoria diagnosis or transgender status.

*Reestablishment of the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) Central Coordination Cell:* The OUSD(P&R) will reestablish the Central Coordination Cell (CCC) to provide expert advice and assistance to the Military Departments and Services and to commanders with regard to this Interim Guidance. The CCC may be reached at <https://ra.sp.pentagon.mil/DoDCCC/SitePages/HomePage.aspx>.

IMMEDIATE RELEASE

# Statement by Secretary of Defense Jim Mattis on Military Service by Transgender Individuals

Press Operations

Release No: NR-312-17

Aug. 29, 2017

The Department of Defense has received the Presidential Memorandum, dated August 25, 2017, entitled “Military Service by Transgender Individuals.” The department will carry out the president’s policy direction, in consultation with the Department of Homeland Security. As directed, we will develop a study and implementation plan, which will contain the steps that will promote military readiness, lethality, and unit cohesion, with due regard for budgetary constraints and consistent with applicable law. The soon arriving senior civilian leadership of DOD will play an important role in this effort. The implementation plan will address accessions of transgender individuals and transgender individuals currently serving in the United States military.

Our focus must always be on what is best for the military’s combat effectiveness leading to victory on the battlefield. To that end, I will establish a panel of experts serving within the Departments of Defense and Homeland Security to provide advice and recommendations on the implementation of the president’s direction. Panel members will bring mature experience, most notably in combat and deployed operations, and seasoned judgment to this task. The panel will assemble and thoroughly analyze all pertinent data, quantifiable and non-quantifiable. Further information on the panel will be forthcoming.

Once the panel reports its recommendations and following my consultation with the secretary of Homeland Security, I will provide my advice to the president concerning implementation of his policy direction. In the interim, current policy with respect to currently serving members will remain in place. I expect to issue interim guidance to the force concerning the president’s direction, including any necessary interim adjustments to procedures, to ensure the continued combat readiness of the force until our final policy on this subject is issued.

IMMEDIATE RELEASE

# Statement by Chief Pentagon Spokesperson Dana W. White on Transgender Accessions

Press Operations

Release No: NR-250-17

June 30, 2017

Secretary Mattis today approved a recommendation by the services to defer accessing transgender applicants into the military until Jan. 1, 2018.

The services will review their accession plans and provide input on the impact to the readiness and lethality of our forces.



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

JUN 30 2016

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
CHIEF OF THE NATIONAL GUARD BUREAU  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, COST ASSESSMENT AND PROGRAM  
EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER  
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ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC  
AFFAIRS  
DIRECTOR, NET ASSESSMENT  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Directive-type Memorandum (DTM) 16-005, "Military Service of Transgender Service Members"

References: DoD Directive 1020.02E, "Diversity Management and Equal Opportunity in the DoD," June 8, 2015  
DoD Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," August 18, 1995  
DoD Instruction 6130.03, "Medical Standards for Appointment, Enlistment, or Induction in the Military Services," April 28, 2010, as amended

Purpose. This DTM:

- Establishes policy, assigns responsibilities, and prescribes procedures for the standards for retention, accession, separation, in-service transition, and medical coverage for transgender personnel serving in the Military Services.
- Except as otherwise noted, this DTM will take effect immediately. It will be converted to a new DoDI. This DTM will expire effective June 30, 2017.

Applicability. This DTM applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the

Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

### Policy.

- The defense of the Nation requires a well-trained, all-volunteer force comprised of Active and Reserve Component Service members ready to deploy worldwide on combat and operational missions.
- The policy of the Department of Defense is that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military.
- These policies and procedures are premised on my conclusion that open service by transgender Service members while being subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming, deployability, and retention, is consistent with military readiness and with strength through diversity.

### Responsibilities

- The Secretaries of the Military Departments will:
  - Take immediate action to identify all DoD, Military Department, and Service issuances, the content of which relate to, or may be affected by, the open service of transgender Service members.
  - Draft revisions to the issuances identified, and, as necessary and appropriate, draft new issuances, consistent with the policies and procedures in this memorandum.
  - Submit to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) the text of any proposed revisions to existing Military Department and Service regulations, policies, and guidance, and of any proposed new issuance, no later than 30 days in advance of the proposed publication date of each.
- The USD(P&R) will:
  - Take immediate action to identify all DoD, Military Department, and Service issuances, the content of which relate to, or may be affected by, the open service of transgender Service members.

- Draft revisions to the issuances identified in this memorandum and, as necessary and appropriate, draft new issuances consistent with the policies and procedures in this memorandum.

Procedures. See Attachment.

Releasability. **Cleared for public release.** This DTM is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

A handwritten signature in black ink that reads "Ash Carter". The signature is written in a cursive, flowing style.

Attachment:

As stated

cc:

Secretary of Homeland Security  
Commandant, United States Coast Guard

ATTACHMENT

PROCEDURES

1. SEPARATION AND RETENTION

a. Effective immediately, no otherwise qualified Service member may be involuntarily separated, discharged or denied reenlistment or continuation of service, solely on the basis of their gender identity.

b. Transgender Service members will be subject to the same standards as any other Service member of the same gender; they may be separated, discharged, or denied reenlistment or continuation of service under existing processes and basis, but not due solely to their gender identity or an expressed intent to transition genders.

c. A Service member whose ability to serve is adversely affected by a medical condition or medical treatment related to their gender identity should be treated, for purposes of separation and retention, in a manner consistent with a Service member whose ability to serve is similarly affected for reasons unrelated to gender identity or gender transition.

2. ACCESSIONS

a. Medical standards for accession into the Military Services help to ensure that those entering service are free of medical conditions or physical defects that may require excessive time lost from duty. Not later than July 1, 2017, the USD(P&R) will update DoD Instruction 6130.03 to reflect the following policies and procedures:

(1) A history of gender dysphoria is disqualifying, **unless**, as certified by a licensed medical provider, the applicant has been stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months.

(2) A history of medical treatment associated with gender transition is disqualifying, **unless**, as certified by a licensed medical provider:

(a) the applicant has completed all medical treatment associated with the applicant's gender transition; and

(b) the applicant has been stable in the preferred gender for 18 months;  
and

(c) If the applicant is presently receiving cross-sex hormone therapy post-gender transition, the individual has been stable on such hormones for 18 months.

(3) A history of sex reassignment or genital reconstruction surgery is disqualifying, **unless**, as certified by a licensed medical provider:

(a) a period of 18 months has elapsed since the date of the most recent of any such surgery; and

(b) no functional limitations or complications persist, nor is any additional surgery required.

b. The Secretaries of the Military Departments and the Commandant, United States Coast Guard, may waive or reduce the 18-month periods, in whole or in part, in individual cases for applicable reasons.

c. The standards for accession described in this memorandum will be reviewed no later than 24 months from the effective date of this memorandum and may be maintained or changed, as appropriate, to reflect applicable medical standards and clinical practice guidelines, ensure consistency with military readiness, and promote effectiveness in the recruiting and retention policies and procedures of the Armed Forces.

### 3. IN-SERVICE TRANSITION

a. Effective October 1, 2016, DoD will implement a construct by which transgender Service members may transition gender while serving, in accordance with DoDI 1300.28, which I signed today.

b. Gender transition while serving in the military presents unique challenges associated with addressing the needs of the Service member in a manner consistent with military mission and readiness needs.

4. MEDICAL POLICY. Not later than October 1, 2016, the USD(P&R) will issue further guidance on the provision of necessary medical care and treatment to transgender Service members. Until the issuance of such guidance, the Military Departments and Services will handle requests from transgender Service members for particular medical care or to transition on a case-by-case basis, following the spirit and intent of this memorandum and DoDI 1300.28.

### 5. EQUAL OPPORTUNITY

a. All Service members are entitled to equal opportunity in an environment free from sexual harassment and unlawful discrimination on the basis of race, color, national origin, religion, sex, or sexual orientation. It is the Department's position, consistent with the U.S. Attorney General's opinion, that discrimination based on gender identity is a form of sex discrimination.

b. The USD(P&R) will revise DoD Directives (DoDDs) 1020.02E, "Diversity Management and Equal Opportunity in the DoD," and 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program," to prohibit discrimination on the basis of gender identity and to incorporate such prohibitions in all aspects of the DoD MEO program. The USD(P&R) will prescribe the period of time within which Military Department and Service issuances implementing the MEO program must be conformed accordingly.

## 6. EDUCATION AND TRAINING

a. The USD(P&R) will expeditiously develop and promulgate education and training materials to provide relevant, useful information for transgender Service members, commanders, the force, and medical professionals regarding DoD policies and procedures on transgender service. The USD(P&R) will disseminate these training materials to all Military Departments and the Coast Guard not later than October 1, 2016.

b. Not later than November 1, 2016, each Military Department will issue implementing guidance and a written force training and education plan. Such plan will detail the Military Department's plan and program for training and educating its assigned force (to include medical professionals), including the standards to which such education and training will be conducted, and the period of time within which it will be completed.

## 7. IMPLEMENTATION AND TIMELINE

a. Not later than October 1, 2016, the USD(P&R) will issue a Commander's Training Handbook, medical guidance, and guidance establishing procedures for changing a Service member's gender marker in DEERS.

b. In the period between the date of this memorandum and October 1, 2016, the Military Departments and Services will address requests for gender transition from serving transgender Service members on a case-by-case basis, following the spirit and intent of this memorandum and DoDI 1300.28.

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

**RYAN KARNOSKI, *et al.*,**

**Plaintiffs,**

**v.**

**DONALD J. TRUMP, *et al.*,**

**Defendants.**

**Civil Action No. 2:17-cv-1297 (MJP)**

**DECLARATION OF LERNES J. HEBERT**

I, Lernes J. Hebert, do hereby declare as follows:

1. I am currently the Acting Deputy Assistant Secretary of Defense, Military Personnel Policy, in the Office of the Under Secretary of Defense for Personnel and Readiness. In that capacity, I am responsible for overseeing the human resource policies impacting the sustainment of the all-volunteer-force for the Department of Defense (“DoD” or “the Department”), which consists of 1.4 million active duty military personnel and 1.1 million Guard and Reserve personnel. I have served in Military Personnel Policy since August 2003 and have led the Department through a number of major personnel initiatives and policy changes. Prior to my retirement from the United States Air Force in the rank of Colonel after 24 years of active service, I served at every level of the field of personnel management to include key assignments in the Office of the Secretary of Defense, the Air Staff, at the Air Force Personnel Center, and with Air Combat Command. I hold a Master of Science Degree in

National Security Strategy from the National War College and a Master of Arts degree in Management and Computer Resource Management from Webster University.

2. In the exercise of my official duties, I have been made aware of the above-referenced litigation pending in the U.S. District Court for the Western District of Washington, as well as three additional suits by transgender individuals pending in other jurisdictions, including *Jane Doe 1 v. Trump*, pending in the District of Columbia, and *Stone v. Trump*, pending in the District of Maryland, in which I have submitted a declaration similar to the one here. Specifically, I am aware of the preliminary injunction entered by the Court in this action on December 11, 2017, with respect to three aspects of the Presidential Memorandum of August 25, 2017, including the provision directing DoD to maintain the Department's longstanding policy which generally prohibits accession of transgender individuals into military service. My understanding is that the Court's injunction resets an effective date of January 1, 2018, for the accessions provisions of Defense Department Directive-Type Memorandum ("DTM") 16-005, issued on June 30, 2016, which allows for the accession of transgender individuals into the military.

3. I submit this declaration in support of Defendants' Motion for Clarification and, If Necessary, a Partial Stay of Preliminary Injunction Pending Appeal. The purpose of this declaration is to provide the Court with my assessment, based on my experience and professional judgment, regarding the feasibility of implementing the court's orders by January 1, 2018, and the harmful impact to the military, its missions, and readiness if it is required to comply with the Court's orders that mandate the January 1, 2018 effective date for the accessions policy in DTM 16-005. The statements made herein are based on my personal knowledge and information available to me in the course of my official duties.

4. Secretary of Defense Mattis exercised his authority on June 30, 2017, to defer the effective date for the accessions provisions of DTM 16-005 from July 1, 2017, to January 1, 2018. *See* Department of Defense, Release No. NR-250-17 (June 30, 2017). Subsequently, the Presidential Memorandum of August 25, 2017, directed the Secretary of Defense (and the Secretary of Homeland Security with respect to the U.S. Coast Guard) to maintain the then-currently effective policy restricting accession by transgender individuals into military service beyond January 1, 2018, until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the President. The Presidential Memorandum also directed the Secretary of Defense to submit an implementation plan to the President by February 21, 2018, with respect to the policy set forth in the memorandum concerning accession and service by transgender individuals in the military. The Presidential Memorandum further directed that the implementation plan shall adhere to the determinations made by the Secretary as to what steps are appropriate and consistent with military effectiveness, lethality, budgetary constraints, and existing law. The review being undertaken by the Panel of Experts appointed by the Secretary on September 14, 2017, to carry out the study directed by the President remains ongoing. The Panel's work is expected to result in recommendations to the Secretary of Defense early next year. The Department would also establish the policy, standards, and procedures to support those Panel recommendations adopted by the Secretary. Thus, at present, the Department is studying revisions to policy concerning military service by transgender individuals, to be completed in early 2018, while at the same time preparing to operate under a judicial order to implement DTM 16-005 by January 1, 2018.

5. Implementing the Court's orders with respect to the accessions policy in DTM 16-005 by January 1, 2018, will impose extraordinary burdens on the Department and the

military services. For organizations as large and as complex as DoD and the military services, the study, development, and implementation of significant personnel policies is necessarily a substantial undertaking. As set forth below, there are considerable requirements associated with implementing this significant and complex policy change across the Department, considering that those personnel directly responsible for execution number in the tens of thousands and are geographically dispersed across the United States. Specifically, implementation of a new accession policy necessitates preparation, training, and communication to ensure those responsible for application of the accession standards are thoroughly versed in the policy and its implementation procedures. This requires that the following personnel have a working knowledge or in-depth medical understanding of the standards and identity validation requirements associated with processing an applicant under new requirements:

- 20,367 recruiters (responsible for resolving any gender identity conflict between an applicant's government identification documents and the gender in which they present themselves and assisting the applicant in completing the Accession Medical Prescreen Report (DD Form 2807-2), including by providing substantiating and supporting medical documents);
- 2,785 employees across 65 geographically dispersed Military Entrance Processing Stations (MEPS), including 568 medical division personnel, 102 Chief and Assistant Chief Medical Officers, and approximately 375 fee-based medical providers, all necessitating in-depth knowledge of the standards;
- 32 Service Medical Waiver Authorities authorized to grant medical waiver requests following a thorough evaluation of the applicant's medical history and recommendation from the MEPS Chief Medical Officer; and

- Personnel at the nine initial military entrance training locations (“boot camps”) and the associated military hospitals that support them.

6. Beyond the sheer number of components and personnel involved, the implementation of accessions criteria is itself a complex undertaking. Accession criteria are based on service needs and are designed to ensure that those individuals accepted are “qualified, effective, and able-bodied persons” (10 U.S.C. § 505) who are capable of successfully performing military duties. Such duties involve a wide range of demands including exposure to danger, emotional stress, harsh environments, and the operation of dangerous, sensitive or classified equipment. Such demands are not normally found in civilian occupations. Further, all military members must be available for worldwide duty 24 hours a day without restriction or delay. This duty may be in remote areas lacking immediate and comprehensive medical support. An important objective of this thorough applicant screening is to ensure that persons accepted for the military are physically and psychologically qualified to withstand such isolation and rigors. These policies exist to protect both the individuals concerned, as well as members of their units and the overall readiness of the force. The accession screening process requires military and medical professionals well versed in the standards, and their applicability to military readiness, to ensure both the individual and the Department’s best interests are served. In the case of the transgender accession standards, the standards themselves are complex, interdisciplinary standards necessitating evaluation across several systems of the body, to include behavioral and mental health (e.g. diagnosis of gender dysphoria or related comorbidities), surgical procedures (particularly thoracic and genital), and endocrinology (for the purposes of cross-sex hormone therapy). No other accession standard has been implemented that presents such a multifaceted review of an applicant’s medical history.

7. It is also important to remember that this court-mandated policy change comes at a time when the military's operational tempo remains high and DoD's primary focus is on ongoing combat and contingency operations overseas.

8. Accordingly, if the Department is compelled to execute transgender accessions by January 1 absent sufficient guidance, resources, and training, the possibility exists that transgender applicants may not receive the appropriate medical and administrative accession screening necessary for someone with a complex medical condition. As a result, an applicant may be accessed for military service who is not physically or psychologically equipped to engage in combat/operational service.

9. Although the Department was in the process of implementing DTM 16-005 after its issuance in June 2016, that process was first extended by the Secretary in June 2017, and then deferred further pending completion of the study directed by the President on August 25, 2017. In addition, key personnel involved in that accession enterprise have rotated in the past several months, necessitating additional preparation, training, and communication to ensure those responsible for application of the accession standards are thoroughly prepared. Thus, notwithstanding the implementation efforts made to date, the Department still would not be adequately and properly prepared to begin processing transgender applicants for military service by January 1, 2018.

10. Finally, especially given that this extensive and elaborate process for implementing the DTM 16-005 accessions policy is time-consuming and costly, the Department will be twice burdened if it is required to implement DTM 16-005 by January 1, and then potentially a different policy after the Department concludes its study and finalizes a policy. It is possible that the accession standards and the implementing procedures that result from that

ongoing policy review could be different from those that the Court has directed DoD to implement on January 1, 2018. Carrying out the implementation enterprise again, after the ongoing policy review is completed, would not only present the prospect of significant duplicative costs and administrative burdens, but the high potential for sowing confusion in the ranks as to the applicable policy.

Pursuant to 28 U.S.C. § 1746(2), I declare under the penalty of perjury that the foregoing is true and correct.

Executed on 12/13/2017

A handwritten signature in black ink, appearing to read "L. Hebert", is written over a horizontal line.

Lernes J. Hebert

The Honorable Marsha J. Pechman

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

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

RYAN KARNOSKI, et al.,  
*Plaintiffs,*  
v.  
DONALD J. TRUMP, in his official capacity as  
President of the United States, et al.,  
*Defendants.*

**DECLARATION OF RYAN  
KARNOSKI IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:  
October 6, 2017  
ORAL ARGUMENT REQUESTED

I, Ryan Karnoski, declare as follows:

- 1. My name is Ryan Karnoski. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.
- 2. I am a 22-year-old man and I live in Seattle, Washington with my fiancée. I am currently registered with the Selective Service.
- 3. I am a member of both the Human Rights Campaign and the American Military Partner Association.
- 4. I am a mental health clinician in Seattle, Washington, and I would like to put my social work skills to use for the military. Social work is an area for which there can be significant need in the military, including in the Army and the Navy.
- 5. I hold a Masters in Social Work from the University of Washington School of Social Work's Child Welfare Training Advancement Program. Given that I hold a master's

1 degree, I aspire to serve as an officer in the military.

2 6. I come from a family with a legacy of military service. My grandfather and step-  
3 grandfather served in the Army during the Korean War, and I have other relatives who have  
4 served in the Army and Navy.

5 7. My desire to join the military came into sharper focus following the death of my  
6 cousin, who was killed in action in Afghanistan in 2009. My cousin's death—and the toll that it  
7 took on surviving family members—further impressed upon me the tremendous sacrifice that  
8 service members make for our country. I also realized my own desire to serve in the military was  
9 motivated by more than simply family legacy: it was a personal calling and it is something that I  
10 have long dreamt of being able to fulfill.

11 8. I am transgender. I was assigned the sex of female at birth. However, I have  
12 known for many years, since approximately early 2012, that I am male.

13 9. I began living openly as male in 2014.

14 10. In consultation with health care professionals, I have taken clinically appropriate  
15 steps as part of my medical transition.

16 11. I have taken legal steps to transition. In March of 2014, I legally changed my first  
17 name to Ryan. At that time, I also changed my name and gender marker to male on my driver's  
18 license, birth certificate, social security card and records, and passport.

19 12. Because I have wanted to enlist in the military for many years, I have followed  
20 the policies about service by transgender people closely.

21 13. ● On June 30, 2016 Secretary of Defense Ash Carter announced a new policy that  
22 lifted the ban on transgender people serving in the U.S. military.

23 14. I remember reading Secretary Carter's contemporaneous public statement. He  
24 said:

25 We're talking about talented Americans who are serving with distinction or who  
26 want the opportunity to serve. We can't allow barriers unrelated to a person's  
27 qualifications prevent us from recruiting and retaining those who can best  
28 accomplish the mission.

15. His announcement made me feel like I finally could be respected as an equal by

1 my government. Effective immediately on June 30, 2016, transgender military members were  
2 allowed to serve openly. Additionally, the new policy moved the military one step closer towards  
3 allowing transgender people to enlist or commission into the military by initiating a process  
4 towards developing a practice and policy that would be inclusive of transgender individuals  
5 wishing to serve. I was so excited to be one step closer to helping fill the significant need to  
6 support our troops and their families, many of whom require mental health support to deal with  
7 the burdens that come with military service.

8 16. I am ready and able to pursue a military career. In fact, I contacted military  
9 recruiters in or around September 2016, but I was open about my transgender status and  
10 discussed with a recruiter having to wait until the current accessions bar was lifted. I was  
11 referred to recruiting offices in King County, Washington, as my point of contact for further  
12 communications regarding my accession.

13 17. On July 26, 2017, President Trump posted three tweets that introduced a reversal  
14 of the inclusive policy for current and prospective service members, and later issued a  
15 memorandum ordering a ban on service by transgender people in the military.

16 18. I am devastated by the judgment within the White House about my ability to serve  
17 in the military, as well as by the implementation of President Trump's tweeted ban on  
18 transgender service. It has painful to have to watch people in power and in the media talk about  
19 transgender people as if we are unfit to serve, even though we are able-bodied and desire to serve  
20 our country. I have seen first-hand the burdens and suffering imposed on families who have lost  
21 loved ones in combat, and want to devote my professional energy to helping people cope with  
22 those difficult circumstances. I have made careful plans to be able to do exactly that, and this  
23 new policy has upended them.

24 19. The President's tweets and the resulting policy have caused me to feel out of  
25 control of my professional future, and distressed that the military is turning away highly  
26 qualified people during a time of significant need. Military social workers can help service  
27 members and their families deal with anything from long separations from each other, to trauma  
28 experienced during service, to the medical and financial stresses that can flow from military

1 service. If I am denied the equal opportunity to seek to commission into the military, then I will  
2 not only be foreclosed from career opportunities and advancement for which I would be eligible,  
3 but, more importantly, I will not be able to serve a population that has a crucial and urgent need  
4 for qualified mental health professionals.

5 20. I am a man, and I am fit to serve in the military as a man. I believe that the new  
6 policy directed by President Trump reflects deeply troubling misconceptions about transgender  
7 people not being real men and women. I believe that the transgender ban is an effort to erase my  
8 identity entirely.

9 21. By implementing this discriminatory ban, the President of the United States, my  
10 country, the Secretary of Defense, and the Department of Defense have sought to mark me as  
11 inferior, marginalize me, and stigmatize me. In doing so, they have caused me great distress,  
12 discomfort, and pain.

13 22. If permitted to do so, I would seek commission into the military.

14 23. I have engaged in speech and conduct disclosing my transgender status and  
15 expressing my gender identity and want to continue to be able to do so. For example, it is critical  
16 to me to be able to express that I am a man, and for others to understand that I am male.

17 24. All that I want is to live openly as the man I am and to be treated with respect and  
18 dignity by the military.

19  
20 I declare under the penalty of perjury that the foregoing is true and correct.

21  
22 DATED: September 13, 2017

  
\_\_\_\_\_  
Ryan Karnoski

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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*

The Honorable Marsha J. Pechman

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**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 CATHRINE  
SCHMID IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:  
October 6, 2017  
ORAL ARGUMENT REQUESTED

I, CATHRINE Schmid, declare as follows:

1. My legal name is Cathrine Schmid, although I often use the nickname “Katie.” I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am a 33-year-old woman, and I live in Lakewood, Washington with my wife.

3. I am a Staff Sergeant in the U.S. Army and am currently stationed at Joint Base Lewis McChord in Washington State.

4. I enlisted in the U.S. Army in 2005. I have been serving for more than twelve years.

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

6. I was exposed to military life at an early age. My father served in the military

1 when I was a child. I have always been a patriotic American with a desire to serve others and  
2 was drawn to opportunities presented by serving in the Army. I am proud to put on my uniform  
3 each day and serve my country.

4 7. My military occupation specialty is Signals Intelligence Analyst within the Army  
5 and I currently perform duties as Brigade Land and Ammunition Manager. Before my current  
6 role, I performed duties as a Signals Intelligence Analyst, All-Source Analysis System Master  
7 Analyst, Human Intelligence Collector, and Counterintelligence Agent.

8 8. I am transgender. I was assigned the sex of male at birth. I knew from the age of  
9 five or six that I am female.

10 9. I began to come to terms with my gender identity approximately four years ago.  
11 At that time, I started to see a mental health professional who diagnosed me with gender  
12 dysphoria.

13 10. I began living openly as a woman in 2014.

14 11. In consultation with health care professionals, I have taken clinically appropriate  
15 steps to transition. I also have further transition-related health care needs, including medically  
16 necessary surgical treatment. The approval for that treatment is now uncertain, at best, as a result  
17 of the recent events discussed below.

18 12. I have taken legal steps to transition. In June 2015, I legally changed my first  
19 name to Cathrine. At that time, I also changed my name and changed my gender marker to  
20 female on my driver's license, passport, and social security records.

21 13. I have worked with my chain of command throughout my transition, and both  
22 they and other enlisted personnel have been supportive of me throughout that process.

23 14. The fact that I am transgender has not prevented me from doing my job in the  
24 military nor has my gender identity prevented others from doing their jobs in the military. I  
25 perform valuable services for the Army working in the field of military intelligence, and my  
26 performance of those duties strengthen our nation's military readiness.

27 15. I have received awards and decorations for my service including a Joint Service  
28 Commendation Medal, two Army Commendation Medals, two Joint Service Achievement

1 Medals, an Army Achievement Medal, a Joint Meritorious Unit Award, an Army Superior Unit  
2 Award, four Army Good Conduct Medals, a National Defense Service Medal, a Korean Service  
3 Medal, a Global War on Terrorism Service Medal, two Non-Commissioned Officer Professional  
4 Development Ribbons, an Army Service Ribbon, two Overseas Service Ribbons, a  
5 Marksmanship Qualification Badge-Expert with Rifle, and a Marksmanship Qualification  
6 Badge-Sharpshooter with Pistol.

7 16. Prior to my transition, I was recognized for my excellence at work, but  
8 maintaining my secret could, at times, be distracting. I took pains to filter my speech and  
9 behavior so as not to appear too feminine and would spend energy worrying that others had  
10 noticed when my behavior was feminine in nature. This most negatively affected my ability to be  
11 a confident leader. Since my transition, I no longer filter myself and I am a better, more  
12 confident leader.

13 17. Being able to serve openly as a transgender woman has made me a stronger asset  
14 to the military. I am able to function as a productive, healthy member of the military, and I am  
15 able to forge stronger relationships with others in my unit. Comradery is an absolute necessity in  
16 any unit and honesty is the single most important factor in cohesiveness. If members of the unit  
17 can be honest with each other, then they can trust each other. Now that I can be open about who I  
18 am, I have noticed that others are more open about themselves in my presence because they can  
19 perceive my trust in them.

20 18. On June 30, 2016, Secretary of Defense Ash Carter announced a new military-  
21 wide policy lifting the ban on transgender service. This change in policy permitted other people,  
22 similarly situated to me, to come out and serve openly as transgender members of the military  
23 without fear of forced separation based on their transgender status. I remember stating, at the  
24 time, that I felt a huge sense of relief and happiness that I was able to stop worrying about losing  
25 my career based on my transgender status and simply focus on my duties.

26 19. 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  
28 may transition, for medical treatment, and for changing a service member's gender marker in the

1 Defense Enrollment Eligibility Reporting System (DEERS).

2 20. In October 2016, I changed my gender marker in DEERS. Since that time, I have  
3 followed female standards for dress, grooming, and physical fitness.

4 21. Over the last year, the DoD has been implementing new the inclusive policy,  
5 including through transgender-specific trainings. I have assisted in the provision of these  
6 trainings to fellow service members.

7 22. On July 26, 2017, President Trump posted three tweets that indicated a radical  
8 shift in military policy that previously had allowed open service by transgender service members.

9 23. This abrupt change in policy and implicit commentary on my value to the military  
10 and competency to serve has caused me to feel tremendous anguish. Nevertheless, on the  
11 morning that I learned of the tweets, I remained steadfast in my duties—I still stood in morning  
12 formation, still did my morning reports, and still did my morning four mile run. I did my job  
13 because, in the wake of such sudden chaos, I was able to fall back on my training and focused on  
14 my duties.

15 24. In the weeks since the President posted the tweets about transgender service and  
16 the White House issued a memorandum implementing the policy in those tweets, I have lost  
17 sleep. The memorandum also indicates that the military will no longer provide transition-related  
18 surgical care—which I still need—on the same terms as before.

19 25. The ban against open service has affected my ability to maintain employment in  
20 the military at all, causing me to feel incredible fear. Serving in the Army is my calling. I have  
21 served for more than twelve years and currently have an Estimate Termination of Service date of  
22 February 28, 2026. The ban throws my future and livelihood into jeopardy.

23 26. I am currently living with an immense amount of anxiety regarding all the ways in  
24 which the new retention policy negatively affects me.

25 27. I am the sole financial provider for my household and I am responsible for  
26 monthly child support payments. My wife, who also is transgender, and I both rely on TriCare  
27 for all of our medical needs. My separation from the Army would disrupt our medically  
28 necessary transition-related care.

1           28. My military career has already been harmed because of discrimination on the  
2 basis of my transgender status. In June 2017, I submitted an application to become an Army  
3 warrant officer, which my commanding officers had encouraged me to do. A warrant officer is a  
4 highly specialized expert and trainer in a technical area such as aviation, military police, or, in  
5 my case, intelligence. My application was approved at the initial stages.

6           29. The military's current accessions bar not only excludes transgender individuals  
7 from enlistment but also from becoming officers, even where an individual is already serving in  
8 the military. I was informed in writing in July 2017 by Human Resources Command G3 Special  
9 Programs Office at Army Recruiting Command Headquarters that my application was placed on  
10 hold, and thus was not being considered further at the time, because of the current accessions  
11 bar. My understanding is that that bar was previously set to expire as early as January 1, 2018,  
12 but it has now been extended indefinitely by the White House memorandum.

13           30. I have been deprived of an equal opportunity to become a warrant officer solely  
14 because I am transgender. The accessions ban prevents me from advancing in my career and  
15 thereby forecloses future opportunities only open to warrant officers. I am prevented from  
16 applying my skillset to positively influence the military in a more impactful way than my current  
17 position allows. I know that I could better serve the Army as a warrant officer.

18           31. An enlisted service member must apply to be a Warrant Officer within the first  
19 twelve years of their service. I reached twelve years of service in February 2017. I submitted a  
20 waiver request with my application in June 2017. However, every day that my application is  
21 delayed moves me further from the date marking my twelve years of service, which reduces the  
22 likelihood that my related waiver will be granted.

23           32. On August 31, 2017, my company commander spoke with the Human Resources  
24 Command G3 Special Programs Office at Army Recruiting Command Headquarters. My  
25 company commander was informed that I could submit an exception to policy request to become  
26 a warrant officer despite my transgender status. However, the ability to make an exception to  
27 policy request does not mean that it will be granted, and I have received no confirmation that any  
28 such request would be authorized. Indeed, I have already previously pursued multiple avenues—

1 including through a U.S. Senator’s office, the Inspector General’s office, the Army Equal  
2 Opportunity process, and others—to pursue my application after I was informed in July 2017  
3 that the accessions bar stood as a barrier to its consideration. All of these avenues resulted in  
4 confirmation that the accessions bar was being correctly applied to prevent my application from  
5 moving forward and being approved because I am transgender.

6 33. I have engaged in speech and conduct disclosing my transgender status and  
7 expressing my gender identity, including by coming out to my chain of command and my fellow  
8 service members, taking steps to transition, and living openly as a woman in military life. I want  
9 to continue to be able to engage in speech and conduct disclosing my transgender status and  
10 expressing my gender identity.

11  
12 I declare under the penalty of perjury that the foregoing is true and correct.

13  
14 9/13/2017

15 X 

16 DATED: September 13, 2017

17 Signed by: SCHMID.CATHRINE.JOY.1276935565

18 Cathrine Schmid

**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*

The Honorable Marsha J. Pechman

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**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 D.L. IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**NOTE ON MOTION CALENDAR:  
October 6, 2017  
ORAL ARGUMENT REQUESTED**

I, D.L., declare as follows:

1. I, D.L., am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I am a 17 year-old man and I live in Corpus Christi, Texas. I attend high school and anticipate graduating in roughly September 2017.

3. I come from a family with military service and take great pride in that. My great grandfather and great uncle both served in the Army. My great grandfather earned a Purple Heart for his service. I want to follow in their footsteps by serving my country.

4. I have put a lot of thought into my career path. For years, I have done research, spoken to veterans of different services, and decided to enlist in the Air Force. My ideal job would be to serve as a Survival, Evasion, Resistance and Escape Specialist in the Air Force. I am

1 adventurous and love the outdoors. I think I would be well suited to excel in this position,  
2 training other Airmen on survival-related techniques needed for various terrains and climates in  
3 the event that their aircraft goes down. I am very serious about pursuing this career path and  
4 want the opportunity to do so.

5 5. If not for the current ban on enlistment for transgender individuals, I could join  
6 the military at 17 years of age (my current age), with parental consent. My mother and next  
7 friend, Laura Garza, supports me in my decision. She is proud of my decision to serve and  
8 pursue my ambitions.

9 6. In preparation for enlistment, I began communicating with an Air Force recruiter  
10 in early July 2017. When I disclosed to the recruiter that I am transgender, the recruiter stopped  
11 communicating with me.

12 7. I am transgender. I was assigned the sex of female at birth but my gender identity  
13 is male. I came out about this in the summer of 2015 and have lived openly as male since that  
14 time.

15 8. In consultation with health care professionals, I have taken clinically appropriate  
16 steps to transition.

17 9. I have experienced some challenges in coming out as transgender and people are  
18 not always accepting of who I am. I was so relieved and hopeful, though, when I found out that I  
19 would be able to enlist in the military, being open about myself, and being able to follow my  
20 dreams to serve. For the past year, based on the announcement that transgender people could  
21 serve openly, I had prepared for the military and been very optimistic about my future in the Air  
22 Force.

23 10. To later have the President of the United States take that future away, on Twitter,  
24 and discriminate against me and other people who are transgender was demoralizing. I would not  
25 have expected that from the leader of our country.

26 11. Specifically, on July 26, 2017, I saw that President Trump posted three tweets that  
27 spoke to a potential new policy regarding transgender service people. The tweets read:

28 After consultation with my Generals and military experts, please be advised that

1 the United States Government will not accept or allow.....

2 ....Transgender individuals to serve in any capacity in the U.S. Military. Our

3 military must be focused on decisive and overwhelming.....

4 ....victory and cannot be burdened with the tremendous medical costs and

5 disruption that transgender in the military would entail. Thank you

6 12. I remember reading these tweets on my cell phone and telling my mother and  
7 girlfriend about them. I will never forget that. I was in disbelief and shocked that the President,  
8 the leader of our country, would say such things and blatantly discriminate against a group of  
9 people, like me, who only want to serve their country. I felt disheartened and devastated. It was  
10 like my whole future dreams were crushed instantly by his words. I also felt anger that the  
11 President would target a specific group of people for exclusion from the military.

12 13. The President's tweets against transgender soldiers and the document that the  
13 President sent on August 25, 2017 – preventing transgender individuals from joining the military  
14 – have caused me to feel deep sorrow mixed with anxiety and anger. For instance, after reading  
15 the President's tweets, I had great difficulty sleeping. I lay in bed feeling like my entire future  
16 got thrown out the window, and for such an unfair and unjust reason. I feel uncertain about my  
17 future and lost.

18 14. I had put all my energy and focus into joining the military. I was planning to  
19 enlist upon graduation from high school. I have not made other plans. I was counting on pursuing  
20 a military career, and still feel called to do so. The President's decision to ban people like me  
21 from the military feels like someone pulled the rug out from under me. It has caused me  
22 tremendous stress and difficulty.

23 15. I want to be able to join the military as soon as possible. Any delays will hurt my  
24 long-term career possibilities. It also makes it incredibly hard for me to plan my life immediately  
25 after graduating from high school, not knowing if I will be able to join the military. My peers can  
26 all pick out their future careers, and then pursue that career, but I cannot do that. Plus, the  
27 military will lose out on a capable, committed, and ready service member. I know there are many  
28 people like myself who would add strength to our military and serve honorably if we were only

1 given the chance. We should be able to do so, and should be judged like everyone else – based on  
2 our abilities – and not our personal traits such as our gender identity.

3 16. If not for the President’s tweets and ban on open service by transgender  
4 individuals, I would seek to enlist. I am ready and able to begin pursuing my career in the  
5 military and do not want to be prevented any longer.

6 17. I have engaged in speech and conduct that has disclosed my status and identity as  
7 a transgender man. I have expressed my gender identity, including by coming out to the Air  
8 Force recruiter, taking steps to transition, and living openly as male in my everyday life. I want  
9 and need to be able to continue to engage in speech and conduct disclosing my transgender status  
10 and expressing my male gender identity.

11  
12 I declare under the penalty of perjury that the foregoing is true and correct.

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14 DATED: September 12, 2017

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17 D.L.

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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*

The Honorable Marsha J. Pechman

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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 CONNER  
CALLAHAN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:  
October 6, 2017  
ORAL ARGUMENT REQUESTED

I, Conner Callahan, declare as follows:

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

2. I am a 29-year-old man, and I live in Asheville, North Carolina.

3. I am a Public Safety Officer at Warren Wilson College in Asheville, North Carolina.

4. I have wanted to enlist in the military since age 13. I come from a family with a legacy of military service and consider it my personal calling to serve and protect the people of the United States in this capacity.

5. I would like to put my investigative and problem-solving skills to use for the

1 military. In 2014, with the help of a U.S. Air Force recruiter in Kent, Ohio, I identified the  
2 enlisted position I would like to pursue: Explosive Ordnance Disposal (“EOD”).

3 6. I am transgender. I was assigned the sex of female at birth. However, I have  
4 known for many years, since approximately early 2012, that I am male.

5 7. I began living openly as male in 2014 and have done so consistently since that  
6 time.

7 8. In consultation with health care professionals, I have taken clinically appropriate  
8 steps to transition, which were completed in 2015.

9 9. I have taken legal steps to transition. I legally changed my first name to Conner. I  
10 have changed my legal gender to male by court order. I also changed my name and gender  
11 marker to male on my driver’s license and on my social security card and records.

12 10. On June 30, 2016, I learned about the ban on open transgender service being lifted  
13 by the military, and also learned that there would be a path for people like me, who wanted to  
14 enlist. I did internet research about the different branches and spoke with an Army recruiter in  
15 Cleveland, Ohio in July 2016 because they had expressed that their branch was willing to work  
16 with transgender people who wanted to enlist.

17 11. I am ready and able to pursue a military career. When I spoke with military  
18 recruiters I was open about my transgender status and discussed with a recruiter what position  
19 would be best for me after enlistment. I also took practice Armed Services Vocational Aptitude  
20 (also known as “ASVAB”) tests, scoring above the 90th percentile on both tests.

21 12. On July 26, 2017, President Trump posted three tweets that said that transgender  
22 people would not be able to serve in the military “in any capacity.”

23 13. I was utterly devastated by this news; it felt as if the floor had fallen out from  
24 beneath my feet. I felt betrayed by my country and by our government. I had already sacrificed a  
25 great deal in my personal life to come out as transgender, including the loss of support from my  
26 then spouse and from family members. This was yet another crippling blow to my self-worth and  
27 identity.

28 14. As a 29-year-old man, I have a finite amount of time left to enlist in the military.

1 It has been my life’s goal and it has been difficult to try to make other plans for my future when  
2 this is so clearly the best path for me. I want to serve my country and feel immense regret that I  
3 have not yet been able to do so based upon illegitimate considerations.

4 15. The implementation of the ban by the Department of Defense has left me  
5 despondent, despairing, and utterly hopeless. I am forced to consider a future I never saw for  
6 myself: one without service to my country.

7 16. By implementing this discriminatory ban, the President of the United States, the  
8 Secretary of Defense, and the Department of Defense have harmed me in serious ways.

9 17. The ban on accessions for transgender people deprives me of educational and  
10 economic opportunities upon which I have relied in planning for my future. I cannot afford to  
11 attain the kind of educational achievement I desire without the G.I. Bill, which is another means  
12 of bettering myself and ensuring financial security.

13 18. The ban on accessions for transgender people also robs me of the opportunity to  
14 foster respect and esteem with my fellow service members, chain of command, and military  
15 community. Joining the military is like joining a family. The loss of such a priceless opportunity  
16 not only impacts my self-confidence and ability to move forward in my life, but it also impacts  
17 my future employability in the private sector.

18 19. The ban on accessions for transgender people impairs my ability to connect with  
19 my friends, my family, and my community. I have shared with these people my plans to join the  
20 military for so long that it has become how they see me and understand my place in the world. I  
21 have heard from many of them that it causes them pain to see me so disappointed at being unable  
22 to fulfill this dream. The deep shame that comes from this rejection has caused me immeasurable  
23 emotional pain, the scars of which I may carry with me forever, should the ban not be lifted.

24 20. If permitted to do so, I would enlist in the military as soon as possible. Indeed, I  
25 would, if I could, serve honorably in the military until the age of retirement.

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21. All that I want is to live openly as the man I am and to serve my country with respect and dignity.

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

DATED: September 13, 2017

  
Conner Callahan

**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*

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Civil Action No. 2:17-cv-01297 (MJP)
	)	
DONALD TRUMP, et al.,	)	
	)	
Defendants.	)	
_____	)	

DECLARATION OF CPT TIMOTHY J. McCracken  
(Pertaining to Plaintiff Cathrine Schmid)

I, Timothy J. McCracken, hereby declare as follows:

1. I am a Captain in the U.S. Army currently serving as the Commander, Headquarters and Headquarters Company, 201st Expeditionary Military Intelligence Brigade, at Joint Base Lewis-McChord, Washington. I have been in the Army for over seven years, and I have been in command since September 2017. As a company commander, I am the senior officer within my unit and responsible for all the personnel and equipment within my unit, including processing personnel actions for soldiers under my command. I make this declaration based on my personal knowledge and on information provided to me in the course of my official duties. I submit this declaration in support of the defendants’ motion to dismiss the above-captioned action and in opposition to the plaintiffs’ motion for a preliminary injunction. In particular, I address below the current status of Staff Sergeant (SSG) Cathrine Schmid in the present litigation. SSG Schmid currently has an approved medical treatment plan for gender transition, and her gender marker in the Defense Enrollment Eligibility Reporting System (DEERS) is female.

2. On September 14, 2017, the Secretary of Defense’s issued Interim Guidance prohibiting the involuntary separation or discharge of a soldier due to his or her transgender status or diagnosis of gender dysphoria. In compliance with this policy, no soldier in my unit, to include

SSG Schmid, is currently pending separation or discharge due to their transgender status or gender dysphoria diagnosis. Nor will any soldier in my unit face such a separation, absent a change in the existing policy. Further, no soldier in my unit whose term of service expires while the Interim Guidance is in effect will be denied re-enlistment due to his or her transgender status. Accordingly, SSG Schmid will not be discharged due to her transgender status while the Interim Guidance is in effect.

3. In June 2017, SSG Schmid applied to become a warrant officer through an accessions program with U.S. Army Recruiting Command. Along with her application, she submitted a request for an Active Federal Service (AFS) waiver because she exceeded the maximum years of service allowed by Army regulation to become a warrant officer. In accordance with the Secretary's Interim Guidance concerning accessions, her application and request for an AFS waiver are currently on hold until further guidance is issued. However, the Interim Guidance clarifies that applicants may continue to request waivers in accordance with DODI 6130.03 for medically disqualifying conditions, including standards of fitness related to gender dysphoria or gender transition. SSG Schmid has been advised of the opportunity and procedures necessary to submit such a waiver, but to date she has not elected to do so.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 13 day of October 2017.



Timothy J. McCracken  
Captain, U.S. Army  
Joint Base Lewis-McChord, Washington

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2017, I electronically filed the foregoing declaration using the Court’s CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: October 16, 2017

*/s/ Ryan Parker*  
RYAN B. PARKER  
Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Telephone: (202) 514-4336  
Email: [ryan.parker@usdoj.gov](mailto:ryan.parker@usdoj.gov)

Counsel for Defendants

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

**RYAN KARNOSKI *et al.*,**

**Plaintiffs,**

**v.**

**DONALD J. TRUMP *et al.*,**

**Defendants.**

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

**DECLARATION OF  
PHILLIP A. LAYMAN,  
CHIEF, OPERATIONS DIVISION  
OF THE AIR FORCE RECRUITING  
SERVICES**

I, Phillip A. Layman, declare as follows:

1. I, Phillip A. Layman, am Chief, Operations Division of the Air Force Recruiting Services.
2. I am aware that a lawsuit has been instituted in the above-captioned case. I am aware that this case includes plaintiffs who identify as transgender and claim to have expressed interest in enlisting in the Air Force. Both plaintiffs claim to be negatively impacted by future Department of Defense policy discussed in the Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security, dated August 25, 2017.
3. I am aware that Mr. Conner Callahan is a named plaintiff. Mr. Callahan claims that he met with an Air Force Recruiter in Kent, Ohio in 2014. I have searched the Air Force Recruiting Information Support System – Total Force (AFRISS-TF) database for any records relating to this contact. There were no matches for “Conner Callahan” in the state of Ohio. I checked other spellings of the name. My review of the records

disclosed four matches for individuals named “Connor Callahan” in the state of Ohio; however, without further information, I cannot confirm whether any of these are the same individual described in this litigation. The records I located in the AFRISS-TR system showed the following:

- a. One contact opened February 2010, listed the individual’s date of birth, high school affiliation, Ohio address and phone number. This contact was closed in May 2013.
  - b. One contact opened February 2015. No other information.
  - c. One contact opened December 2011, listed gender and date of birth. No other information.
  - d. One contact opened February 2015, listed a middle name and an email address. No other information.
4. I am aware that “D.L.” is a plaintiff. “D.L.” claims to have made contact with an Air Force Recruiter in Corpus Christi, TX. I have searched AFRISS-TF for any records relating to this contact. My review of the records disclosed two records matching the same individual with the initials “D.L.” in Corpus Christi, TX; however, without further information, I cannot confirm whether this is the same individual described in this litigation. The individual located on the AFRISS-TR system made contact with a recruiter in October 2012 and the contact was closed in August 2013 due to the individual’s stated intention to attend college.
5. In accordance with the interim guidance laid out in the memorandum entitled *Military Service by Transgender Individuals—Interim Guidance*, issued by Secretary of Defense James N. Mattis on September 14, 2017, the procedures set forth in Department of

Defense Instruction (DoDI) 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, dated April 28, 2010 (Change 1), which generally prohibit the accession of transgender individuals into the Military Services, remain in effect because current or history of gender dysphoria or gender transition does not meet medical standards. In other words, there is no change to pre-existing procedures in the Air Force's accessions policy with regards to transgender individuals based on the Presidential Memorandum that was issued on August 25, 2017. As noted in the Interim Guidance this general exclusion is subject to the normal medical waiver process.

- 6. According to Air Force records neither the Conner Callahan nor D.L. who contacted Air Force Recruiters have applied for or been denied accession into the Air Force or a medical waiver for accession into the Air Force.

Pursuant to 28 U.S.C. § 1746, I, Phillip A. Layman, hereby declare under penalty of perjury that the foregoing is true and correct.

16 Oct 2017  
Date

  
PHILLIP A. LAYMAN

Chief, Operations Divisions of the Air Force Recruiting Services

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2017, I electronically filed the foregoing declaration using the Court’s CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: October 16, 2017

/s/ Ryan Parker  
RYAN B. PARKER  
Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
Telephone: (202) 514-4336  
Email: [ryan.parker@usdoj.gov](mailto:ryan.parker@usdoj.gov)

Counsel for Defendants

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2017, I filed the foregoing Addendum with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

s/ Catherine H. Dorsey  
Catherine H. Dorsey