

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JANE DOE 1 *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP *et al.*,

Defendants.

Civil Action No. 17-cv-1597 (CKK)

**DEFENDANTS' OPPOSED MOTION FOR AN EXTENSION OF TIME TO RESPOND
TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs filed this action regarding military service by transgender individuals on August 8, 2017, ECF No. 1, and moved for a preliminary injunction on August 31, 2017, ECF No. 13. After an initial telephone conference, the Court entered a Minute Order on September 1, 2017, directing Defendants to file their opposition to Plaintiffs' motion for a preliminary injunction by no later than September 22, 2017, and Plaintiffs to file their reply no later than September 29, 2017. On September 20, 2017, Defendants moved for an unopposed two-week extension of its deadline to file its opposition to Plaintiffs' motion for a preliminary injunction until October 6, 2017. ECF No. 39. The Court granted Defendants' motion in part and extended Defendants' deadline to oppose Plaintiffs' motion until October 2, 2017. Court's Minute Order of Sept. 20, 2017.

Defendants now respectfully request a two day extension, until October 4, 2017, to respond to Plaintiffs' motion for a preliminary injunction. Defendants have good cause for this motion.

Plaintiffs' motion seeks an order enjoining Defendants from taking various personnel actions with regards to the named Plaintiffs and other transgender people both currently serving in the military and those who wish to serve in future. *See* ECF No 13. at 39. In support of their motion, Plaintiffs have filed twelve (12) declarations, which with exhibits total over 950 pages. Some of Plaintiffs' declarations were filed under seal and Defendants did not receive unredacted versions until September 13, 2017. To properly defend themselves, Defendants wish to submit declarations with their opposition but require more time to finalize those declarations. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 24-25 (2008) (giving great deference to declarations from senior military officials when deciding a preliminary injunction involving the military). Further, senior Executive Branch officials need additional time to review and consider the contents of Defendants' forthcoming motion to dismiss and opposition to Plaintiffs' application for a preliminary injunction.

Plaintiffs will not be prejudiced by this two-day extension. Plaintiffs Jane Doe 1, Jane Doe 2, Jane Doe 3, Jane Doe 4, Jane Doe 5, and John Doe 1, who are all current service members, face no present or imminent threat of an adverse personnel action in light of the Secretary of Defense's issuance of Interim Guidance,¹ which prohibits the military from taking such action against them based on their transgender status. Further, Plaintiffs Regan Kibby and Dylan Kohere will not be prejudiced by a two-day extension because they will not be eligible for an officer's commission until 2020 and 2021 respectively. ECF No. 13 at 31; ECF No. ¶ 39.

¹ The Interim Guidance, issued by Secretary of Defense James Mattis on September 14, 2017, is attached as an exhibit to this motion.

A hearing has not been scheduled for Plaintiffs' motion for a preliminary injunction, and Defendants would not oppose a commensurate two-day extension of Plaintiffs' deadline for filing their reply brief.

Defense counsel has conferred with Plaintiffs' counsel regarding this motion and Plaintiffs have indicated that they oppose the relief requested.

Dated: September 29, 2017

Respectfully submitted,

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Acting Assistant Attorney General,
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/s/ Ryan B. Parker
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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>.

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Civil Action No. 17-cv-1597 (CKK)

**[PROPOSED] ORDER GRANTING DEFENDANTS' OPPOSED MOTION FOR AN
EXTENSION OF TIME TO RESPOND TO PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

For the reasons set forth in their motion, the Court hereby GRANTS Defendants' motion for an extension of time to respond to Plaintiffs' motion for a preliminary injunction. It is, hereby, ordered that Defendants shall file their opposition to Plaintiffs' motion for a preliminary injunction and their cross-motion to dismiss by October 4, 2017.

Date: _____

District Court Judge