**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' MOTION FOR CLARIFICATION
OF THE COURT'S OCTOBER 30, 2017 ORDER**

On October 30, 2017, the Court entered an Order granting in part and denying in part

Defendants' motion to dismiss and granting in part and denying in part Plaintiffs' motion for a

preliminary injunction. ECF No. 60. In its Order, the Court preliminarily enjoined Defendants

from enforcing the "Accession and Retention Directives" in the President's August 25, 2017

Memorandum regarding military service by transgender individuals. *Id.* The Court also

explained that "[t]he effect of the Court's Order is to revert to the *status quo* with regard to

accession and retention that existed before the issuance of the Presidential Memorandum—that

is, the retention and accession policies established in the June 30, 2016 Directive-type

Memorandum as modified by Secretary of Defense James Mattis on June 30, 2017." *Id.*

Wholly apart from the enjoined directives in the Presidential Memorandum, the Secretary

of Defense has independent authority to defer the effective date of the accessions provisions of

Defense Department Directive-Type Memorandum ("DTM") 16-005, issued on June 30, 2016,

for the purpose of further studying whether the DTM will impact military readiness and lethality.

Indeed, as the Court noted, Secretary Mattis exercised that authority on June 30, 2017, when he

deferred 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).[1]

Plaintiffs did not challenge the Secretary's exercise of that authority, nor have they suggested

that the Secretary's action was unlawful in any respect. Instead, Plaintiffs have only sought

prospective relief to enjoin the Secretary from implementing the President's Memorandum,

which the President issued subsequent to the Secretary's exercise of his independent authority.

Accordingly, the Court's October 30, 2017 Order does not prohibit the Secretary of

Defense from exercising his discretion to defer the January 1, 2018 effective date for the

accessions provisions of DTM 16-005 for a limited period of time to further study whether the

policy will impact military readiness and lethality or to complete further steps needed to

implement the policy. Nor could the Court have enjoined the Secretary of Defense from

exercising such discretion because Plaintiffs have not challenged the Secretary's exercise of his

independent authority to study whether the DTM 16-005 will impact military readiness and

lethality. Out of an abundance of caution, however, Defendants now seek clarification that,

should the Secretary of Defense exercise such discretion, the Secretary's action would not violate

the Court's October 30, 2017 Order.

Defendants will be prepared to address the clarification issue at the November 28, 2017

case management conference and respectfully request a ruling on this motion before December

1, 2017, so they may have sufficient time to consider seeking an emergency stay from the Court

of Appeals prior to January 1, 2018, if the Court denies the motion.

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[1] The Department of Defense Release is available online at: https://www.defense.gov/News/News-Releases/News-Release-View/Article/1236145/statement-by-chief-pentagon-spokesperson-dana-w-white-on-transgender-accessions/ (last visited Nov. 22, 2017).

Dated: November 22, 2017   Respectfully submitted,

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