



Let this be filed  
Judge CKollar-Kotelly  
2/16/2018

U.S. Department of Justice  
Civil Division, Federal Program Branch

By Electronic Mail

February 12, 2018

The Honorable Colleen Kollar-Kotelly  
United States District Court Judge  
Kollar-Kotelly\_Chambers@dcd.uscourts.gov

Re: Discovery Dispute in *Doe v. Trump*, Case No. 1:17-cv-01597-CKK

Dear Judge Kollar-Kotelly,

In compliance with this Court's directive on February 9, 2018, Defendants respectfully submit this letter brief. Given the importance of the constitutional and privilege issues addressed below, Defendants respectfully request the opportunity to fully brief these matters.

1. Discovery of the President Should Be Prohibited on Separation-of-Powers Grounds

Plaintiffs have issued broad written discovery requests to the President. As an initial matter, such discovery requests should not be permitted where, as here, they are premised on claims for declaratory and injunctive relief brought directly against the President concerning the exercise of his duties as Commander in Chief. The Supreme Court has held that it has "no jurisdiction of a bill to enjoin the President in the performance of his official duties," *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866); *see also Franklin v. Massachusetts*, 505 U.S. 788, 802-03 (1992), and lower courts often have applied this principle, *see, e.g., Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010). Because the Court lacks jurisdiction to enjoin the President in the performance of his official duties, it cannot order the discovery of the President sought here.

Even assuming the President were a proper defendant and could be subject to a civil discovery order, discovery directed to the President in civil litigation raises significant separation-of-powers concerns and should not be allowed. *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 385 (2004). The Court in *Cheney* noted that the public interest requires that a coequal branch of Government "afford Presidential confidentiality the greatest protection consistent with the fair administration of justice." *Id.* at 382 (quoting *United States v. Nixon*, 418 U.S. 683, 715 (1974)). Indeed, as this Court has recognized, "special considerations control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated." *Am. Historical Ass'n v. Nat'l Archives & Records Admin.*, 402 F. Supp. 2d 171, 182 (D.D.C. 2005) (Kollar-Kotelly, J.) (quoting *Cheney*, 542 U.S. at 385). Accordingly, the Court should, at a minimum, first require Plaintiffs to exhaust alternative sources of non-privileged discovery before subjecting the President to broad, burdensome discovery or resolving Plaintiffs' privilege challenges concerning the President. In considering the need to narrow discovery, the Court also should consider that on February 21, 2018—less than two weeks from now—the Secretary of Defense is expected to submit an implementation plan to the President, which could narrow, if not eliminate, any purported reason for discovery directed to the President.

In addition, the discovery sought by Plaintiffs puts directly at issue information that is subject to the Presidential Communications Privilege (“PCP”). Plaintiffs have demanded the disclosure of what they style as “privilege-log type information,” *i.e.*, “the existence of a communication, its date, and the identity of the participants,” for “communications with the President and/or the Executive Office of the President about transgender military service (including the identity of the ‘Generals and military experts’ disclosed in the tweets).” That information—which is at the heart of Presidential decisionmaking and deliberation—is protected under the PCP, which shields the “confidentiality of Presidential communications in performance of the President’s responsibilities.” *Nixon*, 418 U.S. at 711. “The President can invoke the privilege when asked to produce documents or other materials that reflect presidential decisionmaking and deliberations.” *In re Sealed Case*, 121 F.3d 729, 744 (D.C. Cir. 1997). The privilege also extends to communications authored or solicited and received by immediate White House advisers in the Office of the President and their staff. *See id.* at 752. Documents covered by the PCP are shielded in their entirety, *id.* at 745, and factual information within those documents is also protected by the privilege, *see Loving v. Dep’t of Def.*, 550 F.3d 32, 38 (D.C. Cir. 2008) (contrasting the deliberative process privilege).

Defendants have properly withheld information that identifies communications (including dates and the identity of the participants) with the President and his immediate advisors and their staff regarding military service by transgender individuals. Such information plainly “reflect(s) presidential decisionmaking and deliberations,” and disclosure of this information would intrude on presidential deliberations and impede the President’s ability to perform his constitutional duty. *See In re Sealed Case*, 121 F.3d at 744, 751. In addition, because of the nature of the interrogatories, disclosure of such information would also reveal the substance of the communications.<sup>1</sup>

Withholding this information serves the purpose of the PCP, which ensures that the “President and those who assist him [are] free to explore alternatives in the process of shaping policies and making decisions . . . in a way many would be unwilling to express except privately.” *Nixon*, 418 U.S. at 708. The President and his immediate advisors must be able to discuss military policy among themselves and with officials within the Department of Defense

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<sup>1</sup> This case is distinguishable from *Citizens for Responsibility & Ethics in Washington v. Department of Homeland Security*, 592 F. Supp. 2d 111 (D.D.C. 2009). In that Freedom of Information Act case, the Court determined that the White House visitor logs were not protected by the PCP because the information contained in the logs “sheds no light on the content of communications between the visitor and the President or his advisors, whether the communications related to presidential deliberation or decisionmaking, or whether any substantive communications even occurred.” *Id.* at 118–19. In contrast, Plaintiffs here specifically demanded information that identifies communications (including dates and the identity of the participants) with the President and his immediate advisors and their staff regarding military service by transgender people. Indeed, the Court in *Citizens for Responsibility & Ethics in Washington* acknowledged that its holding “does not rule out the possibility that there may exist some hypothetical situation wherein the factual circumstances surrounding such a visit might reveal the substance of presidential deliberations.” *Id.* at 119.

and the Armed Forces without concern that information regarding their confidential communications will be disclosed.

## 2. Deliberative Process Privilege

Plaintiffs failed to meaningfully meet and confer regarding the information Defendants have withheld on the basis of the deliberative process privilege (“DPP”). On February 8, 2018, undersigned counsel repeatedly requested that Plaintiffs identify those documents that they contend contain information that Defendants improperly withheld. Beyond identifying seven documents as exemplars, Plaintiffs refused to do so.<sup>2</sup> Neither Defendants nor the Court can meaningfully assess Plaintiffs’ claim that information was improperly withheld if Plaintiffs do not specifically identify the documents at issue. This is particularly true where, as here, Plaintiffs must demonstrate a sufficient showing of need for particular documents to overcome the DPP. *See In re Sealed Case*, 121 F.3d at 746; *see also Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1113 (D.C. Cir. 2004).

Rather than identify specific documents, Plaintiffs categorically contend that *all* communications from the Department of Defense after the President issued his statement on July 26, 2017, are post-decisional and thus not protected by the DPP. Plaintiffs’ position has no basis in the law. “[E]ven documents dated after a decision has been made may still be eligible for protection under the deliberative process privilege” because those documents may be “predecisional and deliberative with respect to other, non-final agency policies.” *Judicial Watch, Inc. v. Dep’t of Homeland Security*, 841 F. Supp. 2d 142, 162–63 (D.D.C. 2012) (Kollar-Kotelly, J.) (quoting *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006)).

After the President’s statement on July 26, 2017, the Government continued to examine military service by transgender individuals. A month after that statement, on August 25, 2017, the President issued the Presidential Memorandum to the Secretaries of Defense and Homeland Security directing the Secretaries to further examine military service by transgender individuals. In between those dates, numerous communications were made and documents were generated that were predecisional and deliberative with respect to the Presidential Memorandum. Moreover, given that the Secretary of Defense is expected to submit an implementation plan to the President on February 21, 2018, additional predecisional and deliberative documents have been—and continue to be—generated. These predecisional and deliberative documents that post-date the President’s statement and pre-date the Presidential Memorandum, the Secretary’s upcoming recommendation, and any decision by the President based on that recommendation, reflect the continuous examination of policy and have been properly withheld under the DPP. *See Judicial Watch*, 841 F. Supp. 2d at 163.

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<sup>2</sup> Plaintiffs identified seven emails sent among Navy officials on July 26, 2017, as being improperly withheld. As stated on the privilege log provided to Plaintiffs, those emails are all predecisional and deliberative because they discuss policy developments concerning military service by transgender individuals and the exploration of implementation methods. *See Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) (The privilege promotes “honest and frank communication within [an] agency” and therefore protects from disclosure documents that may inaccurately reflect or prematurely disclose the views of the agency.).

February 12, 2018

Respectfully Submitted,

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*/s/ Ryan Parker*

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February 12, 2018

**Via Email**

Hon. Colleen Kollar-Kotelly  
United States District Judge  
United States District Court for the District of Columbia  
333 Constitution Ave. N.W.  
Washington, D.C. 20001

Re: *Doe et al. v. Trump et al.*, Civil Action No. 1:17-cv-1597-CKK

Dear Judge Kollar-Kotelly,

Plaintiffs have requested a conference with the Court concerning two discovery disputes. Plaintiffs raised these issues by e-mail on January 24 and 25, 2018, and the parties conferred about them by telephone on January 30 and February 8, 2018, without agreement. Plaintiffs recognize that the issues presented may require additional briefing and are prepared to submit such briefing on a schedule convenient to the Court.

**Issue No. 1: The Existence of a Presidential Communication Is Not Privileged.**

In his July 26, 2017 tweets, President Trump stated that he “consult[ed] with my Generals and military experts ....” Plaintiffs are attempting to discover the process, if any, that prompted the President’s abruptly tweeted reversal of the military policy permitting service by transgender people.

Plaintiffs propounded interrogatories to discover what process actually preceded the tweets, asking for the type of information that would ordinarily appear on a privilege log (e.g., the existence of an oral or written communication, its date, and the identity of the participants). *See* Ex. A. (Pls.’s Ints.) at 4 (definition 16). In addition to permitting an assessment of any process that preceded the reversal of the policy, this information would provide Plaintiffs with a basis for evaluating any claim of privilege. *See* Ex. A (Pls.’s Ints.) at 6-10 (ints. 2, 4-5, 8, 10, 14, 15, 17, 18, 19, 20, & 21).

Defendants have refused to answer these discovery requests as they relate to communications with the President or the Executive Office of the President and have refused

to produce information that would permit an assessment of the validity of the assertion of privilege. *See, e.g.*, Exs. B (President’s Responses); C (Sec. of Def. Responses); D (Air Force Responses). The President has refused to identify the “Generals and military experts” referenced in his announcement, or when he talked to them or to anyone else about military service by transgender people. *See* Ex. B (President’s Responses) at 10-11. Similarly, the Executive Office of the President has provided a privilege log in response to Plaintiffs’ document requests that is devoid of any useful information. It addresses written communications at such a high level of generality (with single entries covering dozens of documents spanning multiple months and exchanged between unidentified people, including unspecified “outside third parties” and “Members of Congress and their staffs”) that it is impossible to discern what, if any, process resulted in the President’s announcement, or whether any privilege applies. *See* Ex. E (Privilege Log) (highlighting added).

Defendants’ counsel maintains that the presidential communications privilege shields not only the content of communications with the President and certain members of his staff, but also the very existence of such communications. However, the government has routinely provided such information in past cases where the presidential communications privilege was asserted. *See, e.g., Loving v. Dep’t of Def.*, 550 F.3d 32, 36 (D.C. Cir. 2008) (government provided *Vaughn* index, including “documents reflect[ing] the sequential transmission of Loving’s case—and recommendation on it—to the President”); *Judicial Watch Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1110-11 (D.C. Cir. 2004) (government provided *Vaughn* index of 4,341 documents concerning individual pardon petition, including letters and reports from the Deputy Attorney General to the President); *In re Sealed Case*, 121 F.3d 729, 735 (D.C. Cir. 1997) (“[T]he White House produced a privilege log identifying the date, author, and recipient of each document withheld as well as a general statement of the nature of each document and the basis for the privilege on which the document was withheld.”). Courts in this District have ordered the production of such privilege logs or comparable information. *See, e.g., U.S. Dep’t of the Treasury v. Pension Benefit Guaranty Corp.*, 222 F. Supp. 3d 38, 45 (D.D.C. 2016) (ordering privilege log where presidential communications privilege was asserted); *CREW v. Dep’t of Homeland Security*, 592 F. Supp. 2d 111, 117-19 (D.D.C. 2009). Disclosure of the log-type information Plaintiffs seek would undermine none of the purposes served by the privilege.

Further, even if Defendants could establish that the requested “privilege log”-type information is subject to the presidential communications privilege, that qualified privilege would be overcome by Plaintiffs’ need for the information. Among other reasons, the government has put the information squarely in issue by defending the President’s decision as the product of considered and professional military judgment. Having done so, the government cannot refuse to identify the information that would permit Plaintiffs to examine the validity of that claim. If the government refuses to produce this information, it should be estopped from asserting that the President’s decision is entitled to deference as the product of a deliberative process.<sup>1</sup>

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<sup>1</sup> *See Doe v. Trump*, C.A. No. 17-1597 (CKK), 2017 U.S. Dist. LEXIS 178892, at 102-04 (D.D.C. Oct. 30, 2017).

**Issue No. 2: Post-Decisional Communications Are Not Deliberative.**

Defendants have improperly relied on the deliberative process privilege to withhold post-decisional information from their discovery responses. Plaintiffs have requested that the Department of Defense produce documents concerning military service of transgender individuals between the date the President announced his decision to ban transgender individuals from service, July 26, 2017, and his issuance of implementing guidance in a Presidential Memorandum on August 25, 2017. Defendants have responded by producing responsive communications that are heavily redacted on the basis of the deliberative process privilege (not, in these instances, the presidential communications privilege). *See, e.g.*, Ex. F (USDOE00061876); Ex. G (USDOE00061945).

These redactions are improper. The deliberative process privilege applies only to pre-decisional materials, *see, e.g., Abteu v. U.S. Dep't of Homeland Sec'y*, 808 F.3d 895, 898 (D.C. Cir. 2015), not those that “support a decision already made.” *Petroleum Info. Corp. v. United States Dep't of Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992). Here, President Trump made the decision to ban transgender people from serving in the military on or before July 26, 2017. He has declined to deny that fact or offer any alternative date for the decision. *See* Ex. B (President’s Int. Resp.) at 9; Ex. F (President’s RFA Resp.) at 8-9. The requested communications are all necessarily post-decisional, because they occurred after the President’s decision and before any later directive to commence any new deliberations. Thus, the deliberative process privilege cannot possibly apply. Further, even if the government successfully carried its burden to prove the pendency of a decision-making process at the Department of Defense during this time period, then the motivation for that process would be at issue in this case, and the deliberative process privilege would not apply. *See, e.g., In re Subpoena Duces Tecum*, 145 F.3d 1422, 1424 (D.C. Cir.), *on reh’g in part*, 156 F.3d 1279 (D.C. Cir. 1998).

Respectfully,

*/s/ Daniel L. McFadden*

Daniel L. McFadden

Enclosures

Cc: Ryan B. Parker, Esq.

# **EXHIBIT A**



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

JANE DOE 1, JANE DOE 2, JANE DOE 3,  
JANE DOE 4, JANE DOE 5, JOHN DOE 1,  
REGAN V. KIBBY, and DYLAN KOHERE,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States; JAMES N.  
MATTIS, in his official capacity as Secretary of  
Defense; JOSEPH F. DUNFORD, JR., in his  
official capacity as Chairman of the Joint Chiefs  
of Staff; the UNITED STATES DEPARTMENT  
OF THE ARMY; MARK T. ESPER,<sup>1</sup> in his  
official capacity as Secretary of the Army; the  
UNITED STATES DEPARTMENT OF THE  
NAVY; RICHARD V. SPENCER, in his official  
capacity as Secretary of the Navy; the UNITED  
STATES DEPARTMENT OF THE AIR  
FORCE; HEATHER A. WILSON, in her  
official capacity as Secretary of the Air Force;  
the UNITED STATES COAST GUARD;  
KIRSTJEN NIELSEN, in her official capacity as  
Secretary of Homeland Security; the DEFENSE  
HEALTH AGENCY; RAQUEL C. BONO, in  
her official capacity as Director of the Defense  
Health Agency; and the UNITED STATES OF  
AMERICA,

Defendants.

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

**PLAINTIFFS' FIRST SET OF INTERROGATORIES**

<sup>1</sup> Mark T. Esper has been substituted as the Secretary of the Army and Kirstjen Nielsen has been substituted as the Secretary of the Department of Homeland Security pursuant to Federal Rule of Civil Procedure 25(d).

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiffs in the action captioned above hereby request that the Defendants in the action captioned above respond to the following interrogatories within 30 days from the date of service hereof in accordance with Rule 33, the Local Rules of this Court, and the Definitions set forth below.

### **DEFINITIONS**

1. The term “Individual Defendants” shall refer to Defendants Donald J. Trump, James N. Mattis, Joseph F. Dunford, Jr., Mark T. Esper, Richard V. Spencer, Heather A. Wilson, Kirstjen Nielsen, and Raquel C. Bono.

2. The term “President Trump” shall refer to Defendant Donald J. Trump.

3. The term “Secretary Mattis” shall refer to Defendant James N. Mattis.

4. The term “General Dunford” shall refer to Defendant Joseph F. Dunford.

5. The term “Accessions Readiness Memorandum” shall refer to the memorandum issued by Secretary of Defense James Mattis titled “Memorandum for Secretaries of the Military Departments, Chiefs of the Military Services” dated May 8, 2017.

6. The term “Accessions Deferral Memorandum” shall refer to the memorandum issued by Secretary of Defense James Mattis titled “Memorandum for Secretaries of the Military Departments, Chiefs of the Military Services” dated June 30, 2017.

7. The term “DoD Initiative” shall refer to the request by the Department of Defense, responded to by John Doe 1, to obtain information relating to transgender servicemembers.

8. The term “Twitter Statement” shall refer to the statement issued by President Trump on Twitter on July 26, 2017 that: “After consultation with my Generals and military

experts, please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you[.]”

9. The term “Presidential Memorandum” shall refer to the memorandum issued by President Trump on August 25, 2017 titled “Presidential Memorandum for the Secretary of Defense and the Secretary of Homeland Security.”

10. The term “Interim Guidance” shall mean the memorandum issued by Secretary Mattis titled “Memorandum: Military Service of Transgender Individuals – Interim Guidance” dated September 14, 2017.

11. The term “Service Branch” shall mean any or all of the United States Army, the United States Marine Corps, the United States Navy, the United States Air Force, or the United States Coast Guard.

12. The “SCCC” shall refer to any and all Service Central Coordination Cells concerning military service and/or accessions by transgender people, including any established pursuant to or consistent with DoD Instruction 1300.28.

13. The term “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including without limitation letters, memoranda, articles, notes, email, and electronic files of all kinds. A draft or non-identical copy is a separate document within the meaning of this term.

14. The term “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) by any means, including orally, electronically, or by means of or contained in any Document.

15. The term “Organization” shall refer to a corporation, partnership, business, association, or other private or governmental entity.

16. The terms “Identify”, “Identity”, and “Identification” mean, at a minimum, and in addition to any other information requested by a particular Interrogatory:

- a. when referring to a person, (i) the person’s full name and present or last known address, and (ii) the person’s last known title and place of employment;
- b. when referring to an Organization, the name and address of the Organization;
- c. when referring to a Document, (i) the type of Document (e.g., letter, memorandum, email, etc.) and its title or other designation, (ii) its general subject matter, (iii) its date of creation, (iv) if an email, letter, memorandum, written instruction, or other correspondence, its date of transmittal, (v) the Identity of all author(s), addressee(s), and recipient(s) of the Document at any time, and (vi) a statement of whether the Document is unclassified, is classified in part, or is classified in its entirety, and, if the Document is classified, the level(s) of classification (e.g., Confidential, Secret, etc.);
- d. when referring to a Communication, (i) the date of the Communication; (ii) the means of the Communication (e.g., telephonic, in person meeting, letter, email, etc.); (iii) the general subject matter; (iv) for any Communication by telephone or in person meeting, the location and Identity of all attendees and participants; (v) for any Communications by means of or contained in a Document, Identification of the Document containing such Communication; and

- e. when referring to information, facts, data, and research, the complete substance of the information, facts, data, or research.

17. The term “State the Basis” means that a responding party shall, at a minimum, and in addition to any other information requested by a particular Interrogatory:

- a. Identify each and every Document (and, where pertinent, the section, article, or subsection thereof), which forms any part of the source of the party’s information regarding the referenced assertions, facts, or legal conclusions;
- b. Identify each and every Communication which forms any part of the source of the party’s information regarding the referenced assertions, facts or legal conclusions;
- c. State separately the acts or omissions to act on the part of any person or Organization (Identifying the acts or omissions to act by stating their nature, time, and place and Identifying the persons involved) which form any part of the party’s information regarding the referenced assertions, facts, or legal conclusions; and
- d. Identify separately any other information, facts, data, and research which forms the basis of the party’s information regarding the referenced assertions, facts, or legal conclusions.

**INTERROGATORIES TO BE ANSWERED BY DEFENDANT TRUMP**

1. State the date on which President Trump decided that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.”

2. Identify all Documents reviewed, relied upon, and/or considered by President Trump in deciding that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military” on or before July 26, 2017.

3. Identify all information, facts, data, and research reviewed, relied upon, and/or considered by President Trump in deciding that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military” on or before July 26, 2017.

4. Identify the “Generals and military experts” referenced in the Twitter Statement, and, for each such person, Identify all Communications between that person and President Trump concerning military service by transgender people.

5. Identify all Communications between President Trump and any other person concerning President Trump’s decision that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military” from January 20, 2017, to the present.

6. State the Basis for President Trump’s assertion in the Twitter Statement that military service by transgender individuals would entail “tremendous medical costs.”

7. State the Basis for President Trump’s assertion in the Twitter Statement that military service by transgender individuals would entail “disruption.”

8. State whether President Trump received advice or counsel from any attorney in the process of deciding that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military,” and for each such attorney (a) state the date the advice was communicated to President Trump; (b) state the subject matter of such advice;

(c) Identify all Communications containing or transmitting such advice; and (d) Identify all persons to whom the substance of this advice has ever been disclosed.

9. State the “meaningful concerns” referenced in the Presidential Memorandum, and Identify all Documents and Communications relating to those concerns considered by President Trump prior to issuing the Presidential Memorandum and all persons who expressed those concerns to President Trump, including the specific “meaningful concern[.]” articulated by each such person.

10. Identify all Documents that are assessments, reports, evaluations, studies, or other research regarding the impact of military service by transgender individuals on military effectiveness and lethality, unit cohesion, or military resources considered by President Trump in preparing and issuing the Presidential Memorandum.

**INTERROGATORIES TO BE ANSWERED BY DEFENDANT MATTIS**

11. Identify all persons who participated in the drafting of the Accessions Deferral Memorandum, including without limitation all persons who reviewed the memorandum or any draft thereof prior to its release, and, for each such person (1) state their role in drafting the Memorandum; (2) state the date(s) of their participation in drafting the Memorandum; and (3) Identify all Documents memorializing or reflecting such participation.

12. State the Basis for Secretary Mattis' assertion in the Accessions Deferral Memorandum that “it is necessary to defer the start of accessions [of transgender individuals into the military] for six months [until January 1, 2018].”

13. Identify all Communications between Secretary Mattis or his staff, on the one hand, and President Trump or any officer or employee of the Executive Office of the President, on the other, concerning the Accessions Deferral Memorandum.

**INTERROGATORIES TO BE SEPARATELY ANSWERED  
BY DEFENDANTS TRUMP, MATTIS, AND DUNFORD**

14. Identify all Documents that are assessments, reports, evaluations, studies, or other research concerning military service by transgender people that were transmitted to, received by, or considered by President Trump from January 20, 2017, to July 26, 2017, and, for each such Document, Identify the person or Organization who transmitted it to President Trump and state the date(s) of transmission to and receipt by President Trump.

15. Identify all persons involved in drafting the Twitter Statement, including all persons who reviewed the statement or any draft thereof prior to its release to the public via Twitter and, for each such person, (a) state their role in drafting the statement; (b) state the date(s) of their participation in drafting the statement; and (c) Identify all Documents memorializing or reflecting such participation.

16. Identify all persons involved in drafting the Presidential Memorandum, including without limitation all persons who reviewed it or any draft thereof prior to its release to the public, and for each such person, (a) state their role in drafting the Presidential Memorandum; (b) state the date(s) of their participation in drafting the Presidential Memorandum; and (c) Identify all Documents memorializing or reflecting such participation.

17. For every meeting attended by President Trump, Secretary Mattis and/or General Dunford between January 20, 2017, and August 25, 2017, at which military service by transgender people was discussed, (a) state the date of the meeting; (b) Identify all participants in the meeting; (c) state the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

18. Identify all Communications between a United States Senator or member of the United States House of Representatives, on the one hand, and President Trump or any officer or



employee of the Executive Office of the President, on the other, from January 20, 2017, to July 26, 2017, concerning military service by transgender persons.

**INTERROGATORIES TO BE SEPARATELY ANSWERED BY ALL  
DEFENDANTS**

19. Identify all Communications requesting or providing information between January 20, 2017, and August 25, 2017, concerning the military service and/or accession of transgender persons between or among the Executive Office of the President and any of the following: the Department of Defense, the Department of Homeland Security, and/or any Service Branch.

20. Identify all Communications between President Trump and Secretary Mattis, the Department of Defense, General Dunford, the Joint Chiefs of Staff, the Department of Homeland Security, and/or any Service Branch from January 20, 2017, to August 25, 2017, concerning military service by transgender individuals, including Communications concerning: (a) any evaluation(s) conducted by the Department of Defense on the impact of accessions of transgender applicants on readiness or lethality; (b) the issuance of or assessments or other responses provided in response to Accessions Readiness Memorandum; (c) the decision announced in the Accessions Deferral Memorandum; (d) the President's Twitter Statement; (e) the Presidential Memorandum; and/or (f) the Interim Guidance.

21. For every meeting attended by any representative of the Executive Office of the President, the Department of Defense, a Service Branch or the Defense Health Agency between January 20, 2017, and August 25, 2017, at which military service by transgender people was discussed, (a) state the date of the meeting; (b) Identify all participants in the meeting; (c) state the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

22. Identify all Documents that are assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning (a) the impact of transgender individuals serving in the military on military readiness and/or lethality; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

23. Identify all persons employed by or working in an SCCC at any time from June 30, 2016, to the present, and for each such person state the person's dates of employment or work in the SCCC, the person's role and title, and the nature of the person's responsibilities.

24. Describe the DoD Initiative, including, without limitation, the information sought and the manner in which the information was sought, and Identify all persons involved in the dissemination of the request for information pursuant to the DoD Initiative, all persons involved in the collection and reporting of responses to such request, and all persons responsible for reviewing submissions tendered to the Office of the Secretary of Defense in response to the DoD Initiative.

25. Identify all Documents that are (a) responses to any request for information that was part of the DoD Initiative, and/or (b) assessments submitted in response to the memorandum dated May 8, 2017, entitled "Readiness of Military Departments to Implement Accession of Transgender Applicants into Military Service."

December 15, 2017

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 15, 2017 by e-mail upon the following:

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/s/ Daniel L. McFadden  
Daniel L. McFadden

# **EXHIBIT B**

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

JANE DOE 1 <i>et al.</i> ,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 17-cv-1597 (CKK)
	)	
	)	
DONALD J. TRUMP <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	

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**DEFENDANTS’ OBJECTIONS TO PLAINTIFFS’ FIRST SET OF  
INTERROGATORIES TO DEFENDANT DONALD J. TRUMP**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the District of Columbia, Defendants, through their undersigned counsel, hereby submit initial objections to Plaintiffs’ First Set of Interrogatories to Defendant Donald J. Trump, served December 15, 2017.<sup>1</sup> In presenting these objections, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

**Objections to Definitions**

1. Defendants object to Plaintiffs’ Definition 7 (of “DoD Initiative”) to the extent that it is vague, not confined to any specific time period, and presumes that DoD had a formal “initiative” to solicit information.
2. Defendants object to Plaintiffs’ Definition 13 of “Document” as encompassing “without limitation . . . electronic files of all kind,” insofar as data collection and translation are

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<sup>1</sup> These objections are limited to President Trump. Defendants will produce, or already have produced, separate objections and responses for other Defendants, as per the agreement between the parties.

appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

3. Defendants object to Plaintiffs' Definition 17 (of "State the Basis") to the extent that it creates interrogatories with multiple discrete subparts, thus leading to Plaintiffs exceeding the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 17, which applies to Interrogatories Nos. 6 and 7, seeks information related to "each and every Document," "each and every Communication," "the acts or omissions," *and* "any other information, facts, data, and research." Thus, Plaintiffs have served more than the allowed 25 interrogatories. *See Smith v. Cafe Asia*, 256 F.R.D. 247, 254 (D.D.C. 2009) (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, 235 F.R.D. 521, 524 (D.D.C. 2006) (finding that an interrogatory seeking "all facts supporting [a] contention," the identity of "each person who knew," and the identity of "all documents that support the contention" is "more accurately counted as three separate interrogatories"); *Banks v. Office of Senate Sergeant-at-Arms*, 222 F.R.D. 7, 10 (D.D.C. 2004) (An "obvious example" of a discrete subpart "is the combining in a single interrogatory of a demand for information and a demand for the documents that pertain to that event. Clearly, these are two distinct demands because knowing that an event occurred is entirely different from learning about the documents that evidence it occurred. Thus, a demand for information about a certain event and for the documents about it should be counted as two separate interrogatories.").

**General Objection to All Interrogatories**

Defendants object to any discovery directed to the President of the United States in this case, on several grounds, including that such discovery should be foreclosed in this case based on separation of powers principles and that virtually all of the specific discovery sought is subject to executive privilege, and in particular, the presidential communications privilege.

First, such discovery requests are inappropriate where, as here, they are premised on claims for declaratory and injunctive relief brought directly against the President of the United States, who is not a proper defendant on such claims. The Supreme Court has held that it has “no jurisdiction of a bill to enjoin the President in the performance of his official duties.” *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866); *id.* at 500 (“The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department.”). A plurality of the Court later reiterated this principle in *Franklin v. Massachusetts*, 505 U.S. 788, 802–803 (1992). The plurality in *Franklin* found it “extraordinary” that the district court in that case had issued an injunction against the President and two other government officials. *Id.* at 802, 806. “At the threshold,” it said, “the District Court should have evaluated whether injunctive relief against the President was available, and if not, whether appellees’ injuries were nonetheless redressable.” *Id.* at 803. Concurring in *Franklin*, Justice Scalia explained that, under *Mississippi*, courts may impose neither injunctive nor declaratory relief against the President in his official capacity. *Id.* at 827–28 (noting that such principle is “a functionally mandated incident of the President’s unique office, rooted in the constitutional tradition of the separation of powers and supported by our history”). He reasoned that just as the President is absolutely immune from official capacity damages suits, so is he immune from efforts to enjoin him in his official capacity. *Id.* at 827



(“Many of the reasons [the Court] gave in *Nixon v. Fitzgerald*, [457 U.S. 731, 749 (1982)], for acknowledging an absolute Presidential immunity from civil damages for official acts apply with equal, if not greater, force to requests for declaratory or injunctive relief in official-capacity suits that challenge the President’s performance of executive functions”). The lower courts have often applied this settled principle. *See e.g., Swan v. Clinton*, 100 F.3d 973, 976 n.1 (D.C. Cir. 1996) (“similar considerations regarding a court’s power to issue [injunctive] relief against the President himself apply to [the] request for a declaratory judgment”); *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (“With regard to the President, courts do not have jurisdiction to enjoin him and have never submitted the President to declaratory relief.”) (citations omitted). Under that principle, the President should not be subject to discovery in this case.

Second, the Supreme Court has made clear that discovery directed to the President in civil litigation raises significant separation of powers concerns and should be strictly circumscribed. In *Cheney v. U.S. District Court for District of Columbia*, the Supreme Court explained that where the discovery requests were directed to the Vice President and other senior officials of the Executive Branch who gave advice and made recommendations to the President, it was “not a routine discovery dispute.” 542 U.S. 367, 385 (2004). The Court emphasized that “special considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.” *Id.* at 385. The Supreme Court “has held, on more than one occasion, that ‘[t]he highest respect that is owed to the office of the Chief Executive ... is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery.’” *Id.* (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)). Further, the Court has held that the Executive’s “constitutional responsibilities and status [are] factors counseling judicial deference and

restraint” in the conduct of the litigation against it. *Id.* (quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 753 (1982)) (internal quotation marks omitted).

In *Cheney*, the district court permitted broad discovery directed to the Vice President and other senior officials, and the D.C. Circuit dismissed the government’s mandamus petition to vacate the district court’s discovery orders, holding that the government officials, “to guard against intrusion into the President’s prerogatives, must first assert privilege.” 542 U.S. at 375–76. In vacating the D.C. Circuit’s decision, the Supreme Court described as “anything but appropriate” the “overly broad discovery requests” directed to the Vice President and other senior officials, which were “unbounded in scope,” and asked for “everything under the sky.” *Id.* at 387–88 (“The Government [ ] did in fact object to the scope of discovery and asked the District Court to narrow it in some way. Its arguments were ignored.”). Noting the separation of powers concerns, the Supreme Court instructed the D.C. Circuit to analyze, on remand, whether the district court’s actions in permitting discovery against the Vice President and other senior officials constituted “an unwarranted impairment of another branch in the performance of its constitutional duties.” *Id.* at 390. It rejected the D.C. Circuit’s “mistaken assumption that the assertion of executive privilege is a necessary precondition to the Government’s separation-of-powers objections.” *Id.* at 391. *Cf. United States v. Poindexter*, 727 F. Supp. 1501, 1503–04 (D.D.C. 1989) (agreeing with the President that “it is undesirable as a matter of constitutional and public policy to compel a President to make his decision on privilege with respect to a large array of documents” and deciding to narrow, on its own, the scope of the discovery directed to the President). These separation of powers concerns were also recognized in *American Historical Association v. National Archives & Records Administration*. 402 F. Supp. 2d 171, 181 (D.D.C. 2005) (Kollar-Kotelly, J.). The Court there found the reasoning in *Cheney*

instructive, reiterating the *Cheney* Court's view that "special considerations control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated." *Id.* at 181 (quoting *Cheney*, 542 U.S. at 385) (internal quotation marks omitted).

In light of these compelling separation of powers concerns, the Court should, at a minimum, require Plaintiffs to exhaust alternative sources of discovery before subjecting the President to discovery. Indeed, on February 21, 2018—a mere two weeks from now—the Secretary of Defense is expected to submit an implementation plan to the President, which could narrow, if not completely eliminate, any purported reason for such broad discovery directed to the President. Military policy concerning transgender persons will be set forth in that plan, and any discovery, if permitted at all, into the basis for that policy should be directed at DoD in the first instance at that time. This timeline alone weighs heavily in favor of not subjecting the sitting President to discovery.

Finally, virtually all of the discovery directed to the President in this case is subject to the presidential communications privilege. The "presumptive privilege" that attaches to presidential communications is "fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution." *United States v. Nixon*, 418 U.S. 683, 708 (1974); *see In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997) (describing the privilege's "constitutional origins"). The privilege is broad, protecting the "confidentiality of Presidential communications in performance of the President's responsibilities." *United States v. Nixon*, 418 U.S. at 711. *See also In re Sealed Case*, 121 F.3d at 744 ("The *Nixon* cases establish the contours of the presidential communications privilege. The President can invoke the privilege when asked to produce documents or other materials that reflect presidential decisionmaking and

deliberations.”). Documents subject to the presidential communications privilege are shielded in their entirety, and the privilege “covers final and post-decisional material as well as pre-deliberative ones.” *In re Sealed Case*, 121 F.3d at 745.

Although the presidential communications privilege is not absolute, the bar to overcoming the privilege is high; it is “more difficult to surmount” than the deliberative process privilege. *In re Sealed Case*, 121 F.3d at 746. A party seeking otherwise privileged presidential material must demonstrate a “focused demonstration of need.” *Id.*; *See also Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1112 (D.C. Cir. 2004). Courts will balance “the public interests served by protecting the President’s confidentiality in a particular context with those furthered by requiring disclosure.” *In re Sealed Case*, 121 F.3d at 753. To meet this heavy burden of “specific need” in a criminal matter, the party seeking the privileged material must first demonstrate “that each discrete group of the subpoenaed materials likely contains important evidence”—that is, evidence “directly relevant to issues that are expected to be central to the trial,” and not evidence that is “only tangentially relevant or would relate to side issues.” *Id.* at 753–55. The party seeking the discovery must also show “that this evidence is not available with due diligence elsewhere”—that is, notwithstanding other sources of information, the privileged documents are “still needed.” *Id.* (explaining that this standard reflects the Supreme Court’s “insistence that privileged presidential communications should not be treated as just another source of information”).

Where privileged material is sought for use in a civil case, the burden to overcome the presidential communications privilege is even greater. The greater scrutiny is appropriate because “the right to production of relevant evidence in civil proceedings does not have the same ‘constitutional dimensions’” as a request for information in a criminal case. *Cheney*, 542 U.S. at

384 (quoting *United States v. Nixon*, 418 U.S. at 713); *see also Am. Historical Ass'n*, 402 F. Supp. 2d at 181 (explaining that the *Cheney* Court noted that “while withholding necessary materials in an ongoing criminal case constitutes an impermissible impairment of another branch’s essential functions, the same could not be said of document requests in the civil context”); *cf. Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc) (“[T]he sufficiency of the Committee’s showing must depend solely on whether the subpoenaed evidence is *demonstrably critical* to the responsible fulfillment of the Committee’s functions.”) (emphasis added).

In this case—a civil matter seeking discovery directly from the President, in his capacity as Commander-in-Chief, related to his decisionmaking process on a topic involving national security and military concerns—Plaintiffs face a significant burden in order to negate a valid assertion of the presidential communications privilege. Plaintiffs cannot meet this burden, especially where the requested discovery seeks information that, on its face, is privileged (including information about presidential communications, attorney-client and work product materials, and drafts of presidential documents) and would plainly intrude on core presidential deliberations, or where the requested discovery seeks information that could be sought from the Department of Defense or other sources, including publicly available ones.

Accordingly, Defendants object to any discovery requests directed to the President of the United States in this case based on these compelling separation of powers concerns, and in particular object to the discovery sought that is subject to the presidential communications privilege.

**Specific Objections to Interrogatories to be Answered by Defendant Trump**

Interrogatory No. 1:

State the date on which President Trump decided that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.”

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege, or (b) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that “decided” is vague and ambiguous, as well as undefined by Plaintiffs.

Interrogatory No. 2:

Identify all Documents reviewed, relied upon, and/or considered by President Trump in deciding that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military” on or before July 26, 2017.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 3:

Identify all information, facts, data, and research reviewed, relied upon, and/or considered by President Trump in deciding that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military” on or before July 26, 2017.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 4:

Identify the “Generals and military experts” referenced in the Twitter Statement, and, for each such person, Identify all Communications between that person and President Trump concerning military service by transgender people.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 4 contains at least two discrete subparts: (1) a request to identify certain individuals, (2) a separate request to identify communications. *See U.S. ex rel. Pogue*, 235 F.R.D. at 527 (an interrogatory seeking facts, people, and documents was more accurately counted as three separate interrogatories).

Interrogatory No. 5:

Identify all Communications between President Trump and any other person concerning President Trump's decision that "the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military" from January 20, 2017, to the present.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)



communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 6:

State the Basis for President Trump's assertion in the Twitter Statement that military service by transgender individuals would entail "tremendous medical costs."

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects on the grounds that the basis for the President's decision is set forth in the August 25, 2017 Presidential Memorandum.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 17 of "State the Basis" seeks information related to "each and every Document," "each and every Communication," "the acts or omissions," and "any other information, facts, data, and research." Thus, this interrogatory contains four distinct subparts, and Plaintiffs have served more than the allowed 25 interrogatories. *See Smith*, 256 F.R.D. at 254 (explaining that "each interrogatory that seeks identification of documents in addition to an

answer will be counted as two interrogatories”); *U.S. ex rel.*, 235 F.R.D. at 524 (finding that an interrogatory seeking “all facts supporting [a] contention,” the identity of “each person who knew,” and the identity of “all documents that support the contention” is “more accurately counted as three separate interrogatories”); *Banks*, 222 F.R.D. at 10 (An “obvious example” of a discrete subpart “is the combining in a single interrogatory of a demand for information and a demand for the documents that pertain to that event. Clearly, these are two distinct demands because knowing that an event occurred is entirely different from learning about the documents that evidence it occurred. Thus, a demand for information about a certain event and for the documents about it should be counted as two separate interrogatories.”).

Interrogatory No. 7:

State the Basis for President Trump’s assertion in the Twitter Statement that military service by transgender individuals would entail “disruption.”

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects on the grounds that the basis for the President’s decision is set forth in the August 25, 2017 Presidential Memorandum.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 17 of "State the Basis" seeks information related to "each and every Document," "each and every Communication," "the acts or omissions," and "any other information, facts, data, and research." Thus, this interrogatory contains four distinct subparts, and Plaintiffs have served more than the allowed 25 interrogatories. *See Smith*, 256 F.R.D. at 254 (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *U.S. ex rel. Pogue*, 235 F.R.D. at 524 (finding that an interrogatory seeking "all facts supporting [a] contention," the identity of "each person who knew," and the identity of "all documents that support the contention" is "more accurately counted as three separate interrogatories"); *Banks*, 222 F.R.D. at 10 (An "obvious example" of a discrete subpart "is the combining in a single interrogatory of a demand for information and a demand for the documents that pertain to that event. Clearly, these are two distinct demands because knowing that an event occurred is entirely different from learning about the documents that evidence it occurred. Thus, a demand for information about a certain event and for the documents about it should be counted as two separate interrogatories.").

Interrogatory No. 8:

State whether President Trump received advice or counsel from any attorney in the process of deciding that "the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military," and for each such attorney: (a) state the date the advice was communicated to President Trump; (b) state the subject matter of such

advice; (c) Identify all Communications containing or transmitting such advice; and (d) Identify all persons to whom the substance of this advice has ever been disclosed.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 8 contains at least two discrete subparts: (1) a line of questioning related to whether the President received advice from an attorney, including the date and subject matter of the advice (if any), and any communications containing such advice (if any); and (2) a separate question requesting the identity of all persons to whom the substance of this advice has ever been disclosed. *See In re ULLICO Inc. Litig.*, 2006 WL 2398744, at \*2 (D.D.C. June 30, 2006) (“In analyzing whether a subpart is a separate question, the Court looks to whether the subpart introduces a line of inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that precedes it.”) (citation and internal quotation marks omitted); *Banks*, 222 F.R.D. at 10 (explaining that a line of questioning asking “whether a particular product was tested” and “when the tests occurred, who performed them, how and where they were conducted and the result” would be one interrogatory, but “the moment the interrogatory introduces a new

topic that is a distinct field of inquiry,” such as “asking how the results of the tests were used in any advertising about the product’s fitness for a particular purpose,” this new topic “would have to be viewed as a separate interrogatory”).

Interrogatory No. 9:

State the “meaningful concerns” referenced in the Presidential Memorandum, and Identify all Documents and Communications relating to those concerns considered by President Trump prior to issuing the Presidential Memorandum and all persons who expressed those concerns to President Trump, including the specific “meaningful concern[]” articulated by each such person.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 9 contains at least three discrete subparts: (1) a request to identify the “meaningful concerns,” (2) a separate request for documents and communications, and (3) a separate request to identify people and the “meaningful concerns” they articulated. *See U.S. ex rel. Pogue, 235*

F.R.D. at 527 (an interrogatory seeking facts, people, and documents was more accurately counted as three separate interrogatories).

Interrogatory No. 10:

Identify all Documents that are assessments, reports, evaluations, studies, or other research regarding the impact of military service by transgender individuals on military effectiveness and lethality, unit cohesion, or military resources considered by President Trump in preparing and issuing the Presidential Memorandum.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

**President Trump's Specific Objections to Interrogatories to be Separately Answered by Defendants Trump, Mattis, and Dunford**

Interrogatory No. 14:

Identify all Documents that are assessments, reports, evaluations, studies, or other research concerning military service by transgender people that were transmitted to, received by, or considered by President Trump from January 20, 2017, to July 26, 2017, and, for each such Document, Identify the person or Organization who transmitted it to President Trump and state the date(s) of transmission to and receipt by President Trump.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 15:

Identify all persons involved in drafting the Twitter Statement, including all persons who reviewed the statement or any draft thereof prior to its release to the public via Twitter and, for each such person, (a) state their role in drafting the statement; (b) state the date(s) of their participation in drafting the statement; and (c) Identify all Documents memorializing or reflecting such participation.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President further objects to this interrogatory as vague and overbroad to the extent that the phrase “all persons involved” could be construed to apply to individuals with mere

peripheral involvement, as the identity of such individuals is not relevant, such individuals are unlikely to have relevant information, and identifying all such individuals would be excessively burdensome and disproportionate to the needs of the case.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 15 contains at least two discrete subparts: (1) questionings relating to all persons involved in drafting the Twitter Statement, including their role in drafting and the date(s) of their participation, and (2) a separate request for documents reflecting such participation. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Interrogatory No. 16:

Identify all persons involved in drafting the Presidential Memorandum, including without limitation all persons who reviewed it or any draft thereof prior to its release to the public, and for each such person, (a) state their role in drafting the Presidential Memorandum; (b) state the date(s) of their participation in drafting the Presidential Memorandum; and (c) Identify all Documents memorializing or reflecting such participation.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)



communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 16 contains at least two discrete subparts: (1) questionings relating to all persons involved in drafting the Presidential Memorandum, including their role in drafting and the date(s) of their participation, and (2) a separate request for documents reflecting such participation. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Interrogatory No. 17:

For every meeting attended by President Trump, Secretary Mattis and/or General Dunford between January 20, 2017, and August 25, 2017, at which military service by transgender people was discussed, (a) state the date of the meeting; (b) Identify all participants in the meeting; (c) state the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects to this interrogatory as overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the references to “all participants in the meeting,” “the topics discussed,” “all Documents distributed, considered, or discussed,” and “all Documents memorializing such meeting” could be construed to apply to individuals, topics, and documents with mere peripheral connections to the claims and defenses in this case. Any individuals, topics, or documents with mere peripheral connections to this case are not relevant or likely to lead to relevant information, and identifying all such individuals, topics, and documents would be excessively burdensome and disproportionate to the needs of the case.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 17 contains at least two discrete subparts: (1) information about the meetings, and (2) a separate request for documents distributed, considered, or discussed at the meetings or memorializing such meetings. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Interrogatory No. 18:

Identify all Communications between a United States Senator or member of the United States House of Representatives, on the one hand, and President Trump or any officer or

employee of the Executive Office of the President, on the other, from January 20, 2017, to July 26, 2017, concerning military service by transgender persons.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) communications or information protected by the deliberative process privilege; or (b) communications or information protected by the presidential communications privilege.

The foregoing objections do not foreclose the possibility that, to the extent any responsive documents exist, a Member of Congress may seek to oppose the production of information in this case based on the Speech or Debate Clause.

**President Trump's Specific Objections to Interrogatories  
to be Separately Answered by All Defendants**

Interrogatory No. 19:

Identify all Communications requesting or providing information between January 20, 2017, and August 25, 2017, concerning the military service and/or accession of transgender persons between or among the Executive Office of the President and any of the following: the Department of Defense, the Department of Homeland Security, and/or any Service Branch.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 19 contains at least three discrete subparts, as it is requesting information related to the Executive Office of the President's communications with (1) the Department of Defense, (2) Department of Homeland Security, and (3) each of the service branches.

Interrogatory No. 20:

Identify all Communications between President Trump and Secretary Mattis, the Department of Defense, General Dunford, the Joint Chiefs of Staff, the Department of Homeland Security, and/or any Service Branch from January 20, 2017, to August 25, 2017, concerning military service by transgender individuals, including Communications concerning: (a) any evaluation(s) conducted by the Department of Defense on the impact of accessions of transgender applicants on readiness or lethality; (b) the issuance of or assessments or other responses provided in response to Accessions Readiness Memorandum; (c) the decision announced in the Accessions Deferral Memorandum; (d) the President's Twitter Statement; (e) the Presidential Memorandum; and/or (f) the Interim Guidance.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 20 contains at least six discrete subparts, as it is requesting information related to the President's communications with (1) Secretary Mattis, (2) the Department of Defense, (3) General Dunford, (4) the Joint Chiefs of Staff, (5) the Department of Homeland Security, and (6) each of the service branches.

Interrogatory No. 21:

For every meeting attended by any representative of the Executive Office of the President, the Department of Defense, a Service Branch or the Defense Health Agency between January 20, 2017, and August 25, 2017, at which military service by transgender people was discussed, (a) state the date of the meeting; (b) Identify all participants in the meeting; (c) state the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 21 contains at least two discrete subparts: (1) information about the meetings, and (2) a separate request for documents distributed, considered, or discussed at the meetings or memorializing such meetings. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Interrogatory No. 22:

Identify all Documents that are assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning (a) the impact of transgender individuals serving in the military on military readiness and/or lethality; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to “all Documents” purports to require the President to search for and identify documents in any and all locations, regardless of whether (a) the documents are in his possession, (b) he has personal knowledge of the documents, (c) the documents would be redundant, and/or (d) such documents would be likely to yield information that is distinct or that is relevant.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 22 contains three discrete subparts: (1) documents concerning the impact of transgender individuals serving in the military on military readiness and/or lethality, (2) documents concerning medical costs associated with transgender individuals serving in the military, and (3) documents concerning the impact of transgender individuals serving in the military on unit cohesion. *See In re ULLICO Inc. Litig.*, 2006 WL 2398744, at \*2 (“In analyzing whether a subpart is a separate question, the Court looks to whether the subpart introduces a line of inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that precedes it.”) (citation and internal quotation marks omitted).

Interrogatory No. 23:

Identify all persons employed by or working in an SCCC at any time from June 30, 2016, to the present, and for each such person state the person's dates of employment or work in the SCCC, the person's role and title, and the nature of the person's responsibilities.

Specific Objections:

The President objects on the grounds that this Interrogatory is not properly directed to him and should instead be directed to DoD.

To the extent that this interrogatory is deemed to be properly directed to the President, the President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

Interrogatory No. 24:

Describe the DoD Initiative, including, without limitation, the information sought and the manner in which the information was sought, and Identify all persons involved in the dissemination of the request for information pursuant to the DoD Initiative, all persons involved in the collection and reporting of responses to such request, and all persons responsible for reviewing submissions tendered to the Office of the Secretary of Defense in response to the DoD Initiative.

Specific Objections:

To the extent that this interrogatory is deemed to be properly directed to the President, the President makes the following objections. The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)



communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects on the grounds that Plaintiffs' Definition of the term "DoD Initiative" is vague, not confined to any specific time period, and presumes that DoD had a formal "initiative" to solicit information.

Interrogatory No. 25:

Identify all Documents that are (a) responses to any request for information that was part of the DoD Initiative, and/or (b) assessments submitted in response to the memorandum dated May 8, 2017, entitled "Readiness of Military Departments to Implement Accession of Transgender Applicants into Military Service."

Specific Objections:

To the extent that this interrogatory is deemed to be properly directed to the President, the President makes the following objections. The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

The President also objects on the grounds that Plaintiffs' Definition of the term "DoD Initiative" is vague, not confined to any specific time period, and presumes that DoD had a formal "initiative" to solicit information.

The President objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 25 contains two discrete subparts: (1) documents that are responses to any request for information that was part of the DoD Initiative, and (2) documents that are assessments submitted in response to the memorandum dated May 8, 2017, entitled “Readiness of Military Departments to Implement Accession of Transgender Applicants into Military Service.” *See In re ULLICO Inc. Litig.*, 2006 WL 2398744, at \*2 (“In analyzing whether a subpart is a separate question, the Court looks to whether the subpart introduces a line of inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that precedes it.) (citation and internal quotation marks omitted”).

Dated: February 6, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on February 6, 2018, a copy of the document above was served by email on the following:

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/s/ Ryan Parker  
RYAN B. PARKER  
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U.S. Department of Justice

# **EXHIBIT C**

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

JANE DOE 1 <i>et al.</i> ,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 17-cv-1597 (CKK)
	)	
	)	
DONALD J. TRUMP <i>et al.</i>	)	
	)	
	)	
Defendants.	)	

**DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFFS’ FIRST SET OF  
INTERROGATORIES TO SECRETARY MATTIS**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the U.S. District Court for the District of Columbia, Defendants, through their undersigned counsel, hereby submit initial objections and responses to Plaintiffs’ First Set of Interrogatories to James N. Mattis, in his official capacity as Secretary of Defense, served December 15, 2017.<sup>1</sup> In presenting these objections and responses, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

**Objections to Definitions**

1. Defendants object to Plaintiffs’ Definition 7 (of “DoD Initiative”) to the extent that it is vague, not confined to any specific time period, and presumes that DoD had a formal “initiative” to solicit information.

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<sup>1</sup> These objections and responses are limited to Secretary Mattis. Defendants will produce, or already have produced, separate objections and responses for other Defendants, as per the agreement between the parties.

2. Defendants object to Plaintiffs' Definition 13 of "Document" as encompassing "without limitation . . . electronic files of all kind," insofar as data collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

3. Defendants object to Plaintiffs' Definition 17 (of "State the Basis") to the extent that it creates interrogatories with multiple discrete subparts, thus leading to Plaintiffs exceeding the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 17, which applies to Interrogatory No. 12, seeks information related to "each and every Document," "each and every Communication," "the acts or omissions," and "any other information, facts, data, and research." Thus, Plaintiffs have served more than the allowed 25 interrogatories. *See Smith v. Cafe Asia*, 256 F.R.D. 247, 254 (D.D.C. 2009) (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *U.S. ex rel. Pogue v. Diabetes Treatment Centers of Am., Inc.*, 235 F.R.D. 521, 524 (D.D.C. 2006) (finding that an interrogatory seeking "all facts supporting [a] contention," the identity of "each person who knew," and the identity of "all documents that support the contention" is "more accurately counted as three separate interrogatories"); *Banks*, 222 F.R.D. at 10 (An "obvious example" of a discrete subpart "is the combining in a single interrogatory of a demand for information and a demand for the documents that pertain to that event. Clearly, these are two distinct demands because knowing that an event occurred is entirely different from learning about the documents that evidence it occurred. Thus, a demand for information about a certain event and for the documents about it should be counted as two separate interrogatories.").

**Specific Objections and Responses to Interrogatories  
to be Answered by Defendant Mattis**

Interrogatory No. 11:

Identify all persons who participated in the drafting of the Accessions Deferral Memorandum, including without limitation all persons who reviewed the memorandum or any draft thereof prior to its release, and, for each such person (1) state their role in drafting the Memorandum; (2) state the date(s) of their participation in drafting the Memorandum; and (3) Identify all Documents memorializing or reflecting such participation.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 11 contains at least two discrete subparts: (1) questionings relating to all persons involved in drafting the Accessions Deferral Memorandum, including their role in drafting and the date(s) of their participation, and (2) a separate request for documents reflecting such participation. *Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).



Interrogatory No. 12:

State the Basis for Secretary Mattis' assertion in the Accessions Deferral Memorandum that "it is necessary to defer the start of accessions [of transgender individuals into the military] for six months [until January 1, 2018]."

Specific Objections:

Secretary Mattis objects to the extent that this interrogatory contains multiple, discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that they may serve under Federal Rule of Civil Procedure 33(a)(1). Specifically, Plaintiffs' Definition 17 of "State the Basis" seeks information related to "each and every Document," "each and every Communication," "the acts or omissions," and "any other information, facts, data, and research." Thus, this interrogatory contains four distinct subparts, and Plaintiffs have served more than the allowed 25 interrogatories. *See Smith*, 256 F.R.D. at 25 (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories"); *U.S. ex rel. Pogue*, 235 F.R.D. at 524 (finding that an interrogatory seeking "all facts supporting [a] contention," the identity of "each person who knew," and the identity of "all documents that support the contention" is "more accurately counted as three separate interrogatories"); *Banks v. Office of Senate Sergeant-at-Arms*, 222 F.R.D. 7, 10 (D.D.C. 2004) (An "obvious example" of a discrete subpart "is the combining in a single interrogatory of a demand for information and a demand for the documents that pertain to that event. Clearly, these are two distinct demands because knowing that an event occurred is entirely different from learning about the documents that evidence it occurred. Thus, a demand for information about a certain event and for the documents about it should be counted as two separate interrogatories.").

Response:

Considering the responses from the Secretaries of the Military Departments and Chiefs of the Military Services to the Deputy Secretary of Defense's May 8, 2017 directive to assess their readiness to begin accessing transgender applicants into military service on July 1, 2017, *see* Response to Interrogatory No. 25, *below*, and after consulting with the Service Chiefs and Secretaries, Secretary Mattis concluded it was necessary to defer the July 1, 2017 accessions date for six months in order to evaluate more carefully the impact of transgender accessions on readiness and lethality and to ensure that he personally had the benefit of the views of the military leadership and senior civilian officials who were then arriving in the Department of Defense.

Interrogatory No. 13:

Identify all Communications between Secretary Mattis or his staff, on the one hand, and President Trump or any officer or employee of the Executive Office of the President, on the other, concerning the Accessions Deferral Memorandum.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks

- (a) communications or information protected by the attorney-client privilege;
- (b) communications or information protected by the deliberative process privilege; or
- (c) communications or information protected by the presidential communications privilege.

**Secretary Mattis's Specific Objections and Responses to Interrogatories to be Separately Answered by Defendants Trump, Mattis, and Dunford**

Interrogatory No. 14:

Identify all Documents that are assessments, reports, evaluations, studies, or other research concerning military service by transgender people that were transmitted to, received by, or considered by President Trump from January 20, 2017, to July 26, 2017, and, for each such Document, Identify the person or Organization who transmitted it to President Trump and state the date(s) of transmission to and receipt by President Trump.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Interrogatory No. 15:

Identify all persons involved in drafting the Twitter Statement, including all persons who reviewed the statement or any draft thereof prior to its release to the public via Twitter and, for each such person, (a) state their role in drafting the statement; (b) state the date(s) of their participation in drafting the statement; and (c) Identify all Documents memorializing or reflecting such participation.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis further objects to this interrogatory as vague and overbroad to the extent that the phrase “all persons involved” could be construed to apply to individuals with mere peripheral involvement, as the identity of such individuals is not relevant, such individuals are unlikely to have relevant information, and identifying all such individuals would be excessively burdensome and disproportionate to the needs of the case.

Secretary Mattis objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 15 contains at least two discrete subparts: (1) questionings relating to all persons involved in drafting the Twitter Statement, including their role in drafting and the date(s) of their participation, and (2) a separate request for documents reflecting such participation. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Interrogatory No. 16:

Identify all persons involved in drafting the Presidential Memorandum, including without limitation all persons who reviewed it or any draft thereof prior to its release to the public, and for each such person, (a) state their role in drafting the Presidential Memorandum; (b) state the date(s) of their participation in drafting the Presidential Memorandum; and (c) Identify all Documents memorializing or reflecting such participation.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 16 contains at least two discrete subparts: (1) questionings relating to all persons involved in drafting the Presidential Memorandum, including their role in drafting and the date(s) of their participation, and (2) a separate request for documents reflecting such participation. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Interrogatory No. 17:

For every meeting attended by President Trump, Secretary Mattis and/or General Dunford between January 20, 2017, and August 25, 2017, at which military service by transgender people was discussed, (a) state the date of the meeting; (b) Identify all participants in the meeting; (c) state the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to this interrogatory as overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the references to “all participants in the meeting,” “the topics discussed,” “all Documents distributed, considered, or discussed,” and “all Documents memorializing such meeting” could be construed to apply to individuals, topics, and documents with mere peripheral connections to the claims and defenses in this case. Any individuals, topics, or documents with mere peripheral connections to this case are not relevant or likely to lead to relevant information, and identifying all such individuals, topics, and documents would be excessively burdensome and disproportionate to the needs of the case.

Secretary Mattis objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 17 contains at least two discrete subparts: (1) information about the meetings, and (2) a separate request for documents distributed, considered, or discussed at the meetings or memorializing such meetings. *See Smith*, 256 F.R.D. at 254 (explaining that “each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories”).

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in an upcoming document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 18:

Identify all Communications between a United States Senator or member of the United States House of Representatives, on the one hand, and President Trump or any officer or employee of the Executive Office of the President, on the other, from January 20, 2017, to July 26, 2017, concerning military service by transgender persons.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege.

**Secretary Mattis's Specific Objections and Responses to Interrogatories  
to be Separately Answered by All Defendants**

Interrogatory No. 19:

Identify all Communications requesting or providing information between January 20, 2017, and August 25, 2017, concerning the military service and/or accession of transgender persons between or among the Executive Office of the President and any of the following: the Department of Defense, the Department of Homeland Security, and/or any Service Branch.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)

communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 19 contains at least three discrete subparts, as it is requesting information related to the Executive Office of the President's communications with (1) the Department of Defense, (2) Department of Homeland Security, and (3) each of the service branches.

Interrogatory No. 20:

Identify all Communications between President Trump and Secretary Mattis, the Department of Defense, General Dunford, the Joint Chiefs of Staff, the Department of Homeland Security, and/or any Service Branch from January 20, 2017, to August 25, 2017, concerning military service by transgender individuals, including Communications concerning: (a) any evaluation(s) conducted by the Department of Defense on the impact of accessions of transgender applicants on readiness or lethality; (b) the issuance of or assessments or other responses provided in response to Accessions Readiness Memorandum; (c) the decision announced in the Accessions Deferral Memorandum; (d) the President's Twitter Statement; (e) the Presidential Memorandum; and/or (f) the Interim Guidance.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c)



communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 20 contains at least six discrete subparts, as it is requesting information related to the President's communications with (1) Secretary Mattis, (2) the Department of Defense, (3) General Dunford, (4) the Joint Chiefs of Staff, (5) the Department of Homeland Security, and (6) each of the service branches.

Interrogatory No. 21:

For every meeting attended by any representative of the Executive Office of the President, the Department of Defense, a Service Branch or the Defense Health Agency between January 20, 2017, and August 25, 2017, at which military service by transgender people was discussed, (a) state the date of the meeting; (b) Identify all participants in the meeting; (c) state the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and disproportionate to the needs of the case. During the relevant period, the Department of Defense and its components have conducted countless meetings throughout its various components and organizations ranging from informal meetings involving the leadership of particular units to high level policy meetings by Department of Defense leadership. For example, the military services conducted training of all of their uniformed and civilian employees regarding military service by transgender individuals and much of that training occurred during the date range provided in this interrogatory. Collecting the requested information for each meeting and each training session that occurred at facilities across the world would potentially require tens of thousands of hours of work from Department of Defense personnel. Moreover, information regarding the vast majority of these meetings is not relevant to Plaintiffs' claims, let alone proportionate to the needs of the case.

Secretary Mattis also objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 21 contains at least two discrete subparts: (1) information about the meetings, and (2) a separate request for documents distributed, considered, or discussed at the meetings or memorializing such meetings. *See Smith*, 256 F.R.D. at 254 (explaining that "each interrogatory that seeks identification of documents in addition to an answer will be counted as two interrogatories").

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in an

upcoming document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 22:

Identify all Documents that are assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning (a) the impact of transgender individuals serving in the military on military readiness and/or lethality; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis objects on the grounds that this request is overbroad, unduly burdensome, and disproportionate to the needs of the case. Specifically, the reference to “all Documents” purports to require Secretary Mattis to search for and identify documents in any and all locations, regardless of whether (a) the documents are in his possession, (b) he has personal knowledge of the documents, (c) the documents would be redundant, and/or (d) such documents would be likely to yield information that is distinct or that is relevant.

Secretary Mattis objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of

discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 22 contains three discrete subparts: (1) documents concerning the impact of transgender individuals serving in the military on military readiness and/or lethality, (2) documents concerning medical costs associated with transgender individuals serving in the military, and (3) documents concerning the impact of transgender individuals serving in the military on unit cohesion. *See In re ULLICO Inc. Litig.*, 2006 WL 2398744, at \*2 (D.D.C. June 30, 2006) (“In analyzing whether a subpart is a separate question, the Court looks to whether the subpart introduces a line of inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that precedes it.”) (citation and internal quotation marks omitted).

Response:

The information responsive to this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs in an upcoming document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.

Interrogatory No. 23:

Identify all persons employed by or working in an SCCC at any time from June 30, 2016, to the present, and for each such person state the person’s dates of employment or work in the SCCC, the person’s role and title, and the nature of the person’s responsibilities.

Response:

DoD Instruction 1300.28, paragraph 2.2., directs the Secretaries of the Military Departments and the Commandant, United States Coast Guard to establish a Service Central Coordination Cell (SCCC) to provide multi-disciplinary (e.g., medical, legal, military personnel

management) expert advice and assistance to commanders with regard to service by transgender Service members and gender transition in the military and to assist commanders in the execution of Department of Defense, Military Department, and Service policies and procedures. The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) also established a Central Coordination Cell (OSD CCC) to provide expert advice and assistance to the Military Services as they stood up their coordination cells and to address policy questions and concerns that could not be resolved at the Military Services' level. The following individuals have supported the OSD CCC during the specified time frame:

Name	Role/Title	Dates	Responsibilities
Stephanie P. Miller	Director, Accession Policy, OUSD(P&R)	June 30, 2016 - present	Review questions and provide responses based on DoD policies and procedures
COL Lee Gearhart	Asst Dir, Reserve Accessions, Accession Policy, OUSD(P&R)	June 30, 2016 - July 2017	Review questions and provide responses based on DoD policies and procedures
LTC Aaron Wellman	Dep Dir, Reserve Accessions, Accession Policy, OUSD(P&R)	June 30, 2016 - Present	Review questions and provide responses based on DoD policies and procedures
LTC Gary Brown	Asst Dir, Res and Medical Manpower, Accession Policy, OUSD(P&R)	June 30, 2016 - Present	Review questions and provide responses based on DoD policies and procedures
Mr. Dave Gruber	Associate Dep GC, OUSD(P&R)	June 30, 2016 - Present	Review questions and provide responses based on DoD policies and procedures
Dr. Terry Adirim	Acting PDASD-Health Affairs, OUSD(P&R)	April 2017 - Present	Review questions and provide responses based on DoD policies and procedures
Dr. Andrew Findley	Program Manager – Health Affairs, OUSD(P&R)	May 2017 - Present	Review questions and provide responses based on DoD policies and procedures

Interrogatory No. 24:

Describe the DoD Initiative, including, without limitation, the information sought and the manner in which the information was sought, and Identify all persons involved in the dissemination of the request for information pursuant to the DoD Initiative, all persons involved in the collection and reporting of responses to such request, and all persons responsible for reviewing submissions tendered to the Office of the Secretary of Defense in response to the DoD Initiative.

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects on the grounds that Plaintiffs' Definition of the term "DoD Initiative" is vague, not confined to any specific time period, and presumes that DoD had a formal "initiative" to solicit information.

Interrogatory No. 25:

Identify all Documents that are (a) responses to any request for information that was part of the DoD Initiative, and/or (b) assessments submitted in response to the memorandum dated May 8, 2017, entitled "Readiness of Military Departments to Implement Accession of Transgender Applicants into Military Service."

Specific Objections:

Secretary Mattis objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Secretary Mattis also objects on the grounds that Plaintiffs' Definition of the term "DoD Initiative" is vague, not confined to any specific time period, and presumes that DoD had a formal "initiative" to solicit information.

Secretary Mattis objects to this interrogatory to the extent that it contains multiple discrete subparts, and thus Plaintiffs have exceeded the number of interrogatories, inclusive of discrete subparts, that Plaintiffs may serve under Federal Rule of Civil Procedure 33(a)(1). Interrogatory No. 25 contains two discrete subparts: (1) documents that are responses to any request for information that was part of the DoD Initiative, and (2) documents that are assessments submitted in response to the memorandum dated May 8, 2017, entitled "Readiness of Military Departments to Implement Accession of Transgender Applicants into Military Service." *See In re ULLICO Inc. Litig.*, 2006 WL 2398744, at \*2 ("In analyzing whether a subpart is a separate question, the Court looks to whether the subpart introduces a line of inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that precedes it.") (citation and internal quotation marks omitted).

Response:

The information responsive to subpart (b) of this interrogatory, to the extent that it is not privileged, may be derived from a review of certain documents that will be provided to Plaintiffs

in an upcoming document production. Secretary Mattis will supplement this interrogatory response, as needed, following the document production.



As to the responses to the interrogatories, see Attachment A.

As to the objections:

Dated: February 6, 2018

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General  
Civil Division

BRETT A. SHUMATE  
Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Branch Director

ANTHONY J. COPPOLINO  
Deputy Director

/s/ Ryan B. Parker  
RYAN B. PARKER  
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Counsel for Defendants

**ATTACHMENT A**

**VERIFICATION**

Based on information that I obtained in the course of my official duties, I declare under penalty of perjury that the substance of the responses to these interrogatories are true and correct to the best of my knowledge and belief.

Date: 2 Feb. 2018

Signature: Stephanie P. Miller  
STEPHANIE P. MILLER

**CERTIFICATE OF SERVICE**

I hereby certify that, on February 6, 2018, a copy of the document above was served by email on the following:

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/s/ Ryan Parker  
RYAN B. PARKER  
Senior Trial Counsel  
U.S. Department of Justice

# **EXHIBIT D**

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

JANE DOE 1 <i>et al.</i> ,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 17-cv-1597 (CKK)
	)	
	)	
DONALD J. TRUMP <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	

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**THE AIR FORCE’S OBJECTIONS AND RESPONSES  
TO PLAINTIFFS’ FIRST SET OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants the United States Department of the Air Force and Heather A. Wilson, in her official capacity as Secretary of the Air Force, (“Air Force”) hereby provide the following Objections and Responses to Plaintiffs’ First Set of Interrogatories. The Air Force does not, by providing such information, waive any objection to its admissibility on the grounds of relevance, proportionality, accessibility, materiality, or other appropriate ground.

**OBJECTIONS AND RESPONSES TO PLAINTIFFS’  
FIRST SET OF INTERROGATORIES**

**Interrogatory No. 19**

Identify all Communications requesting or providing information between January 20, 2017, and August 25, 2017, concerning the military service and/or accession of transgender persons between or among the Executive Office of the President and any of the following: the Department of Defense, the Department of Homeland Security, and/or any Service Branch.

**Objections to Interrogatory No. 19**

1. The Air Force objects to this interrogatory because it constitutes multiple discrete subparts, including the identification of all Communications among the Executive Office of the President and: (1) the Department of Defense; (2) the Department of Homeland Security; (3) the Department of the Army; (4) the Department of the Navy; (5) the United States Marine Corps; and (6) the Department of the Air Force.

2. The Air Force objects to this interrogatory because it implicates information protected by the deliberative process and presidential communications privileges.

**Interrogatory No. 20**

Identify all Communications between President Trump and Secretary Mattis, the Department of Defense, General Dunford, the Joint Chiefs of Staff, the Department of Homeland Security, and/or any Service Branch from January 20, 2017, to August 25, 2017, concerning military service by transgender individuals, including Communications concerning: (a) any evaluation(s) conducted by the Department of Defense on the impact of accessions of transgender applicants on readiness or lethality; (b) the issuance of or assessments or other responses provided in response to Accessions Readiness Memorandum; (c) the decision announced in the Accessions Deferral Memorandum; (d) the President's Twitter Statement; (e) the Presidential Memorandum; and/or (f) the Interim Guidance.

**Objections to Interrogatory No. 20**

1. The Air Force objects to this interrogatory because it constitutes multiple discrete subparts, including the identification of all communications between President Trump and: (1) Secretary Mattis; (2) the Department of Defense; (3) General Dunford; (4) the Joint Chiefs of Staff; (5) the Department of Homeland Security, (6) the Department of the Army; (7) the

Department of the Navy; (8) the United States Marine Corps; (9) the Department of the Air Force; and (10) the United States Coast Guard regarding (a) any evaluation(s) conducted by the Department of Defense on the impact of accessions of transgender applicants on readiness or lethality; (b) the issuance of or assessments or other responses provided in response to Accessions Readiness Memorandum; (c) the decision announced in the Accessions Deferral Memorandum; (d) the President's Twitter Statement; (e) the Presidential Memorandum; and/or (f) the Interim Guidance.

2. The Air Force objects to this interrogatory because it implicates information protected by the deliberative process and presidential communications privileges.

**Interrogatory No. 21**

For every meeting attended by any representative of the Executive Office of the President, the Department of Defense, a Service Branch or the Defense Health Agency between January 20, 2017, and August 25, 2017, at which military service by transgender people was discussed, (a) state the date of the meeting; (b) Identify all participants in the meeting; (c) state the topics discussed; (d) Identify all Documents distributed, considered, or discussed at such meeting; and (e) Identify all Documents memorializing such meeting.

**Objections to Interrogatory No. 21**

1. The Air Force objects to this interrogatory because it constitutes multiple discrete subparts, including requests for information about “every meeting” attended by (1) the Executive Office of the President, (2) the Department of Defense, (3) the Department of the Army; (4) the Department of the Navy; (5) the United States Marine Corps; and (6) the Department of the Air Force; (7) the United States Coast Guard; and (8) the Defense Health Agency at which military service by transgender people was discussed during the specified time period.

2. The Air Force objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, and disproportionate to the needs of the case. The United State Air Force consists of approximately 491,000 uniformed service members<sup>1</sup> and approximately 140,068 civilian employees<sup>2</sup> stationed throughout the world. During the relevant period, the Air Force has conducted countless meetings throughout its various units ranging from informal meetings involving the leadership of a particular unit to high level policy meetings of the Service Central Coordination Cells (SCCC). For example, the Air Force conducted training of all of its uniformed and civilian employees regarding military service by transgender individuals and much of that training occurred during the date range provided in this interrogatory. Collecting the requested information for each meeting and each training session that occurred at Air Force facilities across the world would potentially require tens of thousands of hours of work from Air Force personnel. Moreover, information regarding the vast majority of these meetings is not relevant to Plaintiffs' claims, let alone proportionate to the needs of the case.

3. The Air Force also objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege.

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<sup>1</sup> See <https://www.defense.gov/News/News-Releases/News-Release-View/Article/652687/department-of-defense-dod-releases-fiscal-year-2017-presidents-budget-proposal/> last visited on January 24, 2018.

<sup>2</sup> See <http://www.afpc.af.mil/About/Air-Force-Demographics/> last visited on January 24, 2018.



**Interrogatory No. 22**

Identify all Documents that are assessments, reports, evaluations, studies, or other research published, conducted, performed by, or at the request of, Defendants between June 30, 2016 and August 25, 2017, concerning (a) the impact of transgender individuals serving in the military on military readiness and/or lethality; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.

**Objections to Interrogatory No. 22**

1. The Air Force objects to this interrogatory because it constitutes multiple discrete subparts, including requests for documents “concerning (a) the impact of transgender individuals serving in the military on military readiness and/or lethality; (b) medical costs associated with transgender individuals serving in the military; or (c) the impact of transgender individuals serving in the military on unit cohesion.”

2. The Air Force objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege.

**Response to Interrogatory No. 22**

Pursuant to Federal Rule of Civil Procedure 33(d), because information responsive to this interrogatory may be derived from a review of certain documents produced in this case, and the burden of deriving the answer is substantially the same for both Plaintiffs and the Air Force, the

Air Force responds as follows: Information requested in this interrogatory was previously provided to Plaintiffs through Defendants' initial document production on January 19, 2018, and can be located at Bates page numbers 00005344 - 00005350. Through the continuing discovery process, additional responsive documents have been located and are being provided to Plaintiffs. Those documents are identified as Bates page numbers 00005746 and 00029493 – 00029494.

**Interrogatory No. 23**

Identify all persons employed by or working in an SCCC at any time from June 30, 2016, to the present, and for each such person state the person's dates of employment or work in the SCCC, the person's role and title, and the nature of the person's responsibilities.

**Response to Interrogatory No. 23**

Pursuant to Federal Rule of Civil Procedure 33(d), because information responsive to this interrogatory may be derived from a review of certain documents produced in this case, and the burden of deriving the answer is substantially the same for both Plaintiffs and the Air Force, the Air Force responds as follows: The information requested in this interrogatory was previously provided to Plaintiffs through Defendants' initial document production and is located at Bates page number 00006914 in the master production file provided to Plaintiff on January 19, 2018. Additionally, it can be located in the native file named AF\_00006914.xlsx, which will be provided with the Air Force's production on January 26, 2018. The nature of the responsibilities for the persons listed in the aforementioned document are reflected through their office symbols. The list included below defines those office symbols and the nature of the responsibilities associated with them. Relevant subordinate offices are indented and listed under the superior office.

Office Symbols and Definitions:

SAF/MR – Office of the Secretary of the Air Force, Manpower and Reserve Affairs

SAF/MRR - Reserve Affairs & Airman Readiness

A1 – Headquarters Air Force, Manpower, Personnel, and Services

A1P – Retirement, Separation, and Force Management

A1PPS - Retirements and Separations

AF/SG – Headquarters Air Force, Surgeon General

A3 – Headquarters Air Force, Operations

JA – Headquarters Air Force, Office of the Judge Advocate General

JAA – Administrative Law Directorate

A4 – Headquarters Air Force, Logistics, Engineering, and Force Protection

GC - Office of the Secretary of the Air Force, Office of General Counsel

GCI – General Counsel, Intelligence, International, and Military Affairs

AFMOA – Air Force Medical Operations Agency

AF/RE – Headquarters Air Force, Air Force Reserve

AF/REM – Air Force Reserve Medical Directorate

MMDT – Medical Multidisciplinary Team

AFRC - Air Force Reserve Command

NGB – National Guard Bureau

**Interrogatory No. 24**

Describe the DoD Initiative, including, without limitation, the information sought and the manner in which the information was sought, and Identify all persons involved in the dissemination of the request for information pursuant to the DoD Initiative, all persons involved

in the collection and reporting of responses to such request, and all persons responsible for reviewing submissions tendered to the Office of the Secretary of Defense in response to the DoD Initiative.

**Objections to Interrogatory No. 24**

1. The Air Force objects to this interrogatory because the term “DoD Initiative” is vague and insufficiently defined. DoD is a large and complex agency, and Plaintiffs’ have failed to provide sufficient information for the Air Force to identify the “Initiative” that is the subject of this interrogatory.

2. The Air Force objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege.

**Interrogatory No. 25**

Identify all Documents that are (a) responses to any request for information that was part of the DoD Initiative, and/or (b) assessments submitted in response to the memorandum dated May 8, 2017, entitled “Readiness of Military Departments to Implement Accession of Transgender Applicants into Military Service.”

**Objections to Interrogatory No. 25**

1. The Air Force objects to this interrogatory because it constitutes multiple discrete subparts, including requests for documents that are “(a) responses to any request for information that was part of the DoD Initiative, and/or (b) assessments submitted in response to the

memorandum dated May 8, 2017, entitled “Readiness of Military Departments to Implement Accession of Transgender Applicants into Military Service.”

2. The Air Force objects to this interrogatory because the term “DoD Initiative” is vague and insufficiently defined. DoD is a large and complex agency, and Plaintiffs’ have failed to provide sufficient information for the Air Force to identify the “Initiative” that is the subject of subpart (a) of this interrogatory.

3. The Air Force objects to this interrogatory to the extent that it seeks (a) attorney work product; (b) communications protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; (d) material the disclosure of which would violate legitimate privacy interests and expectations of persons not party to this litigation; or (e) communications or information protected by the presidential communications privilege.

**Response to Interrogatory No. 25**

Pursuant to Federal Rule of Civil Procedure 33(d), because information responsive to subpart (b) of this interrogatory may be derived from a review of certain documents produced in this case, and the burden of deriving the answer is substantially the same for both Plaintiffs and the Air Force, the Air Force responds as follows: The information requested in subpart (b) of this interrogatory was previously provided to Plaintiffs through Defendants’ initial document production on January 19, 2018 and can be located at Bates page numbers 00008243 - 00008274. Through the continuing discovery process, additional responsive documents have been located and are being provided to Plaintiffs. Those documents are identified as Bates page numbers 00008131 - 00008139, 00008143 – 00008237, and 14734 – 14744.

As to the interrogatories, see Attachment A.

As to the objections:

Dated: January 25, 2018

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General  
Civil Division

BRETT A. SHUMATE  
Deputy Assistant Attorney General

JOHN R. GRIFFITHS  
Branch Director

ANTHONY J. COPPOLINO  
Deputy Director

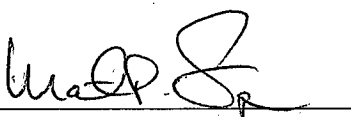
/s/ Ryan B. Parker  
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United States Department of Justice  
Civil Division, Federal Programs Branch  
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Counsel for Defendants

VERIFICATION

Based on information that I obtained in the course of my official duties, I declare under penalty of perjury that the substance of the responses to these interrogatories are true and correct to the best of my knowledge and belief.

Date: 25 JAN 18

Signature:   
MARTHA P. SOPER

**CERTIFICATE OF SERVICE**

I hereby certify that, on January 25, 2018, a copy of the document above was served by email on the following:

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/s/ Ryan Parker  
RYAN B. PARKER  
Senior Trial Counsel  
U.S. Department of Justice



# **EXHIBIT E**

# of Documents*	Description**	Date Range	To	From	Primary Privilege Asserted	Privilege Description
97	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the policies governing transgender individuals' service in the military and regarding anticipated litigation	1/20/2017-7/25/2017	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys in anticipation of litigation during the period when the President and his advisors were deliberating regarding whether to implement the 2016 Secretary of Defense Memorandum; deliberations occurred in anticipation of litigation and included assessments of litigation risk; emails and documents to and from attorneys in the White House Counsel's Office seeking and providing confidential legal advice concerning transgender individuals' service in the military and the 2016 Secretary of Defense Memorandum; emails and documents reflecting White House Counsel's Office legal deliberations concerning issues surrounding transgender individuals' service in the military, which predate a policy decision on transgender individuals' service in the military
153	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the formulation of the 8/25 Presidential Memorandum and regarding anticipated litigation, including drafts of the 8/25/2017 Presidential Memorandum	7/26/2017-8/8/2017	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys in anticipation of litigation regarding the drafting, form, and legality of the 8/25/2017 Presidential Memorandum; emails and documents to and from attorneys in the White House Counsel's Office seeking and providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and anticipated litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum
85	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding policies governing the formulation of the 8/25 Presidential Memorandum and regarding pending litigation, including drafts of the 8/25/2017 Presidential Memorandum	8/9/2017-8/25/2017	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys after litigation had commenced (the Doe Complaint was filed 8/9/2017) regarding the drafting, form, and legality of the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents to and from attorneys in the White House Counsel's Office providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum
343	Internal emails and documents drafted by attorneys in the White House Counsel's Office to deliberate with other attorneys in the White House Counsel's office regarding the implementation of the 8/25 Presidential Memorandum and regarding pending litigation	8/26/2017-1/9/2018	WHCO Attorneys	WHCO Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys after litigation had commenced regarding pending litigation and regarding the implementation of the 8/25/2017 Presidential Memorandum; emails and documents to and from attorneys in the White House Counsel's Office providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum and legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
161	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Office of Legal Counsel to deliberate regarding the formulation, form and legality, and implementation of the 8/25/2017 Presidential Memorandum	6/30/2017-12/4/2017	WHCO and OLC Attorneys	WHCO and OLC Attorneys (in some cases, attorneys from DOD or from other DOJ components are also recipients or cc:ed)	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys in anticipation of litigation, or after litigation had commenced, assessing the form and legality of the 8/25/2017 Presidential Memorandum and implementation thereof; emails and documents to and from attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Office of Legal Counsel seeking and providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
188	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Civil Division regarding pending litigation	8/9/2017-1/11/2018	WHCO and DOJ-Civil Division Attorneys (and, occasionally, attorneys from other DOJ components or from DOD)	WHCO and DOJ-Civil Division Attorneys (and, occasionally, attorneys from other DOJ components or from DOD)	Work Product (in many cases, also covered by Attorney Client Privilege, Deliberative Process Privilege, and Presidential Communications Privilege)	Emails and documents drafted by attorneys during pending litigation regarding litigation strategy, updates, and filings; emails and documents drafted by attorneys in the White House Counsel's Office and attorneys in the Department of Justice's Civil Division seeking and providing confidential legal advice concerning pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
31	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys from DOD regarding the policies governing transgender individuals' service in the military and regarding anticipated litigation	1/20/2017-7/25/2017	WHCO Attorneys and DOD Attorneys	WHCO Attorneys and DOD Attorneys	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted by attorneys in anticipation of litigation during the period when the President and his advisors were deliberating regarding whether to implement the 2016 Secretary of Defense Memorandum; deliberations occurred in anticipation of litigation; emails and documents to and from attorneys in the White House Counsel's Office and attorneys from DOD seeking and providing confidential legal advice concerning policies governing transgender individuals' service in the military and anticipated litigation; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
44	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys from DOD regarding the formulation of the 8/25 Presidential Memorandum and regarding anticipated litigation, including drafts of the 8/25/2017 Presidential Memorandum	7/26/2017-8/8/2017	WHCO Attorneys and DOD Attorneys (and, occasionally, DOJ attorneys)	WHCO Attorneys and DOD Attorneys (and, occasionally, DOJ attorneys)	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted in anticipation of litigation, regarding the drafting, form, and legality of the 8/25/2017 Presidential Memorandum; emails and documents drafted by attorneys in the White House Counsel's Office and attorneys from DOD seeking and providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and anticipated litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum
19	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys from DOD regarding the formulation of the 8/25 Presidential Memorandum and regarding pending litigation, including drafts of the 8/25/2017 Presidential Memorandum	8/9/2017-8/25/2017	WHCO Attorneys and DOD Attorneys (and, occasionally, DOJ attorneys)	WHCO Attorneys and DOD Attorneys (and, occasionally, DOJ attorneys)	Work Product (in many cases, also covered by Presidential Communications Privilege, Deliberative Process Privilege, and Attorney Client Privilege)	Emails and documents drafted after litigation had commenced (the Doe Complaint was filed 8/9/2017) regarding the drafting, form, and legality of the 8/25/2017 Presidential Memorandum and regarding pending litigation; emails and documents to and from attorneys in the White House Counsel's Office and attorneys from DOD seeking and providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning the 8/25/2017 Presidential Memorandum, which predate the issuance of the 8/25/2017 Presidential Memorandum
50	Emails and documents drafted by attorneys in the White House Counsel's Office and attorneys from DOD regarding the implementation of the 8/25/Presidential Memorandum and pending litigation	8/26/2017-12/27/2017	WHCO Attorneys and DOD Attorneys (and, occasionally, DOJ attorneys)	WHCO Attorneys and DOD Attorneys (and, occasionally, DOJ attorneys)	Work Product (in many cases, also covered by Attorney Client Privilege, Deliberative Process Privilege, and Presidential Communications Privilege)	Emails and documents drafted by attorneys after litigation had commenced regarding implementation of the 8/25/2017 Presidential Memorandum and regarding pending litigation; emails and documents to and from attorneys in the White House Counsel's Office and attorneys from DOD seeking and providing confidential legal advice concerning the 8/25/2017 Presidential Memorandum and pending litigation; emails and documents reflecting White House Counsel's Office deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military
39	Emails and documents in which attorneys in the White House Counsel's Office provide legal advice to other White House staffers with regard to the formulation and implementation of the President's policies regarding transgender individuals' military service	1/20/2017-7/25/2017	WHCO Attorneys and Other White House Employees	WHCO Attorneys and Other White House Employees (including, in some cases, other EOP employees from, e.g., the NSC)	Attorney Client Privilege (in many cases, also covered by Work Product Privilege, Deliberative Process Privilege, and Presidential Communications Privilege)	Emails and documents seeking confidential legal advice from WHCO Attorneys and emails and documents drafted by WHCO Attorneys providing confidential legal advice to other White House employees regarding legal aspects of the formulation of the President's policy regarding service by transgender individuals in the military; emails and documents prepared by WHCO Attorneys in anticipation of litigation, concerning legal issues surrounding transgender individuals' service in the military; emails and documents reflecting deliberations by and between WHCO Attorneys and other White House employees concerning transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military





	<p>Emails and documents drafted by attorneys within the White House Counsel's Office, the Executive Office of the President's Office of Administration, and the Department of Justice regarding discovery in the four pending cases challenging the 8/25/2017 Presidential Memorandum</p>	11/3/2017-1/8/2018	Attorneys from WHCO, OA, or DOJ	Attorneys from WHCO, OA, or DOJ	Work Product (in many cases, also covered by Attorney Client Privilege or Deliberative Process Privilege)	<p>Emails and documents drafted in anticipation of litigation or for pending litigation, as the attorneys within the White House Counsel's Office, the Executive Office of the President's Office of Administration, or the Department of Justice discussed how to meet their discovery obligations in the four pending suits challenging the 8/25/2017 Presidential Memorandum; emails and documents from Attorneys from WHCO, OA, or DOJ providing or seeking confidential legal advice concerning the four pending suits; emails and documents reflecting WHCO deliberations concerning legal issues surrounding transgender individuals' service in the military, which predate a final policy decision on transgender individuals' service in the military</p>
113	<p>Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress</p>	1/20/2017-7/25/2017	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	<p>Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs</p>
109	<p>Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress</p>	7/26/2017-8/25/2018	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	<p>Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs</p>
185	<p>Pre-decisional emails and documents in which members of the President's White House Legislative Affairs team deliberate with one another regarding how to advance the President's goals regarding military readiness and lethality (and, by extension, the service of transgender individuals in the military) before Congress</p>	8/26/2017-1/10/2018	Members of the President's Legislative Affairs team	Members of the President's Legislative Affairs team	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	<p>Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with their colleagues regarding the President's policy regarding military readiness (and, thus, the military service of transgender individuals) as it relates to legislative affairs</p>
15	<p>Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with DOD staff regarding interactions with Congress (and members of Congress) and advancing the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military before Congress</p>	7/11/2017-9/12/2017	Members of the President's Legislative Affairs team and/or DOD staff	Members of the President's Legislative Affairs team and/or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	<p>Pre-decisional emails and documents in which members of the President's Legislative Affairs team deliberate with DOD regarding legislative efforts impacting the service of transgender individuals in the military</p>
26	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD staff regarding the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military</p>	1/25/2017-7/25/2017	Members and staff of the National Security Council or DOD staff	Members and staff of the National Security Council or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD regarding the service of transgender individuals in the military (in some cases, leading up to giving advice to the President)</p>
35	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD staff regarding the President's goals with respect to military readiness and lethality and the service of transgender individuals in the military</p>	7/26/2017-1/3/2018	Members and staff of the National Security Council or DOD staff	Members and staff of the National Security Council or DOD staff	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege)	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate with DOD regarding the service of transgender individuals in the military (in some cases, leading up to giving advice to the President)</p>
26	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality and the service of transgender individuals in the military</p>	1/20/2017-7/25/2017	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege, and in some cases also covered by Attorney Client Privilege or Work Product Privilege)	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation; emails and documents prepared in anticipation of litigation, at the direction of counsel, concerning the service of transgender individuals in the military</p>
27	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality and the service of transgender individuals in the military</p>	7/26/2017-8/25/2017	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege, and in some cases also covered by Attorney Client Privilege or Work Product Privilege)	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military</p>
65	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and lethality, the service of transgender individuals in the military, and implementation of the 8/25/2017 Presidential Memorandum</p>	8/26/2017-1/9/2018	Members and staff of the National Security Council	Members and staff of the National Security Council	Deliberative Process Privilege (in many cases, also covered by Presidential Communications Privilege, and in some cases also covered by Attorney Client Privilege or Work Product Privilege)	<p>Pre-decisional emails and documents in which members and staff of the National Security Council deliberate regarding military readiness and the service of transgender individuals in the military; emails and documents reflecting confidential legal advice concerning pending litigation; emails and documents prepared for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military</p>
67	<p>Emails and documents touching on military service by transgender individuals drafted by members of the White House Staff, National Security Council Staff, and agency staff as part of the Staff Secretary or National Security Council Executive Secretary process in order to advise the President or to produce a document for Presidential signing or review</p>	6/16/2017-9/19/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Presidential Communications Privilege (in most cases, also covered by Deliberative Process Privilege; in some cases, also covered by Attorney Client Privilege, or Work Product Privilege)	<p>Emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President, which predate a final policy decision on transgender individuals' service in the military; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military</p>
34	<p>Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including materials that were ultimately reviewed by the President and records of his briefings</p>	1/20/2017-7/25/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	<p>Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning anticipated litigation; emails and documents prepared in anticipation of litigation, at the direction of counsel, concerning the service of transgender individuals in the military</p>
37	<p>Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including drafts of the 8/25/2017 Presidential Memorandum, including materials that were ultimately reviewed by the President and records of his briefings</p>	7/26/2017-8/25/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	<p>Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning anticipated litigation or pending litigation; emails and documents prepared in anticipation of litigation or for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military</p>
14	<p>Pre-decisional emails and documents drafted by members of the White House Staff and other staffers within the Executive Office of the President as part of the Staff Secretary or NSC Executive Secretary process -- in which draft documents are reviewed in order to produce advice for the President or documents for presidential signing or review -- that touch on the service of transgender individuals in the military, including materials that were ultimately reviewed by the President and records of his briefings</p>	8/26/2017-10/6/2017	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	WH, NSC, and agency staffers; each conversation also includes at least one representative from the WH Staff Secretary's Office or the NSC Executive Secretary's Office	Deliberative Process Privilege (in almost all cases, also covered by Presidential Communications Privilege, and in many cases, also covered by Attorney Client Privilege or Work Product Privilege)	<p>Pre-decisional emails and documents in which White House, National Security Council, and agency staff review and comment on draft documents intended for the President's review, to be signed by the President, or to be used to advise the President; emails and documents reflecting confidential legal advice concerning pending litigation; emails and documents prepared for pending litigation, at the direction of counsel, concerning the service of transgender individuals in the military</p>

50	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	1/20/2017-7/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
251	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	7/26/2017-8/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
29	Pre-decisional emails and documents drafted by White House Legislative Affairs Staff and outside parties from whom they solicited information for use in advising the President	8/26/2017-1/11/2018	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties (including Members of Congress and their staffs)	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Legislative Affairs staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
19	Pre-decisional emails and documents drafted by White House Policy Staff and outside parties from whom they solicited information for use in advising the President	1/20/2017-8/25/2017	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Policy staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President
2	Pre-decisional emails and documents drafted by White House Policy Staff and outside parties from whom they solicited information for use in advising the President	8/26/2017-1/11/2018	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Members of the President's Legislative Affairs, Policy, Communications, and NSC Teams, as well as outside third parties	Deliberative Process Privilege (and, in some cases, Presidential Communications Privilege)	Pre-decisional emails and documents drafted by White House Policy staffers to solicit information from third parties as part of a deliberative process and responses to those emails from third parties seeking to assist White House deliberations; in some cases, these communications would lead up to advice to the President

\* Document tallies do not include attachments \*\* Although some documents fall into multiple categories, each document is tallied as only belonging in one category to more accurately reflect volume of documents at issue.

# **EXHIBIT F**

**From:** Christensen, Nathan J LCDR OPNAV N1, N1 PAO  
**To:** Phillips, Curtis K CAPT OPNAV N1, N1 EA; Trant, Timothy Paul T CIV OPNAV N1, N1X  
**CC:** Collins, Elaine CDR N1, N1; Martinez, Miguel R CDR N1, N1X; Rendon, Nicholas P CIV OPNAV N1, N1X; Heritage, Jordan CIV N1, N1X; Anderson, Jessica B LT OPNAV N1, PAO; Anderson, Sharon CIV; Bristol, Janet M CAPT OPNAV, N13X; Long, Kenneth S CAPT OPNAV N1, N13  
**Sent:** 7/26/2017 1:40:07 PM  
**Subject:** RE: POTUS Transgender Ban

**Deliberative Process Privilege**

V/r  
Nate

**From:** Phillips, Curtis K CAPT OPNAV N1, N1 EA  
**Sent:** Wednesday, July 26, 2017 9:27:10 AM  
**To:** Trant, Timothy Paul T CIV OPNAV N1, N1X; Christensen, Nathan J LCDR OPNAV N1, N1 PAO  
**Cc:** Collins, Elaine CDR N1, N1; Martinez, Miguel R CDR N1, N1X; Rendon, Nicholas P CIV OPNAV N1, N1X; Heritage, Jordan CIV N1, N1X; Anderson, Jessica B LT OPNAV N1, PAO; Anderson, Sharon CIV; Bristol, Janet M CAPT OPNAV, N13X; Long, Kenneth S CAPT OPNAV N1, N13  
**Subject:** RE: POTUS Transgender Ban

Tim,

**Deliberative Process Privilege**

Vr  
Curt

CAPT Curt Phillips  
EA to the Chief of Naval Personnel

Cell: [REDACTED] PII

Unclass: [REDACTED]  
Classified: [REDACTED]

-----Original Message-----

**From:** Trant, Timothy Paul T CIV OPNAV N1, N1X  
**Sent:** Wednesday, July 26, 2017 9:25 AM  
**To:** Christensen, Nathan J LCDR OPNAV N1, N1 PAO  
**Cc:** Phillips, Curtis K CAPT OPNAV N1, N1 EA; Collins, Elaine CDR N1, N1; Martinez, Miguel R CDR N1, N1X; Rendon, Nicholas P CIV OPNAV N1, N1X; Heritage, Jordan CIV N1, N1X; Anderson, Jessica B LT OPNAV N1, PAO; Anderson, Sharon CIV  
**Subject:** FW: POTUS Transgender Ban  
**Importance:** High

Nate,

**Deliberative Process Privilege**

V/r, Tim

-----Original Message-----

**From:** Betts, Maura G LCDR OLA, LA-62  
**Sent:** Wednesday, July 26, 2017 9:24 AM  
**To:** Trant, Timothy Paul T CIV OPNAV N1, N1X  
**Cc:** Rendon, Nicholas P CIV OPNAV N1, N1X; Heritage, Jordan CIV N1, N1X; Martinez, Miguel R CDR N1, N1X; Wooten, Danielle M CDR OLA, LA-66



Tim,  
FFYI- BLUF: POTUS 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."

# Deliberative Process Privilege

Here's the article from The Hill, link below:

Trump to ban transgender people from all military service  
President Trump on Wednesday said he would ban transgender people from any military service.

Trump made the announcement, which would represent a major shift in military policy, on Twitter. He said he had made the decision after consulting with "my generals and military experts."

"After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow...Transgender individuals to serve in any capacity in the U.S. Military," Trump tweeted.

"Our military must be focused on decisive and overwhelming...victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you"

<http://thehill.com/homenews/administration/343847-trump-calls-for-ban-on-transgender-individuals-in-military>

V/r,  
Maura

LCDR Maura Betts, PHR  
[REDACTED]  
Office of Legislative Affairs

# **EXHIBIT G**

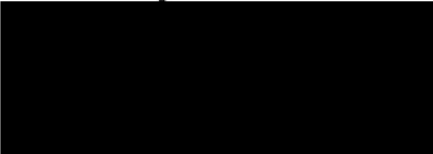
**From:** Labossiere, Meagan J LT OPNAV N1, N17  
**To:** Bristol, Janet M CAPT OPNAV, N13X  
**CC:** Bradshaw, George E CIV OPNAV N17, N173; Jaworski, Steven T LT OPNAV N1, N13; Vandervort, Mark S CIV OPNAV N17, N173  
**Sent:** 7/26/2017 2:37:09 PM  
**Subject:** Transgender Ban

CAPT Bristol,

# Deliberative Process Privilege

Very Respectfully,

Meagan LaBossiere  
LT, USN  
21st Century Sailor Office  
OPNAV N173  
Navy Sexual Harassment Prevention and Equal Opportunity  
NSF Arlington



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# **EXHIBIT H**

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

JANE DOE 1 <i>et al.</i> ,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 17-cv-1597 (CKK)
	)	
	)	
DONALD J. TRUMP <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	

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**DEFENDANTS’ OBJECTIONS TO PLAINTIFFS’ FIRST SET OF REQUESTS FOR  
ADMISSION TO DEFENDANT DONALD J. TRUMP**

Pursuant to Federal Rules of Civil Procedure 26 and 36 and the Local Rules of the U.S. District Court for the District of Columbia, Defendants, through their undersigned counsel, hereby submit initial objections to Plaintiffs’ First Set of Requests for Admission to Defendant Donald J. Trump, served December 15, 2017. In presenting these objections, Defendants do not waive any further objection in pretrial motions practice or at trial to the admissibility of evidence on the grounds of relevance, materiality, privilege, competency, or any other appropriate ground.

**Objection to Definitions**

Defendants object to Plaintiffs’ Definition 10 of “Document” and “Documents” insofar as data collection and translation are appropriate only to the extent reasonable and proportional to the needs of the case, taking into account any technical limitations and costs associated with such efforts.

**General Objection to All Requests for Admission**

Defendants object to any discovery directed to the President of the United States in this case, on several grounds, including that such discovery should be foreclosed in this case based on separation of powers principles and that virtually all of the specific discovery sought is subject to executive privilege, and in particular, the presidential communications privilege.

First, such discovery requests are inappropriate where, as here, they are premised on claims for declaratory and injunctive relief brought directly against the President of the United States, who is not a proper defendant on such claims. The Supreme Court has held that it has “no jurisdiction of a bill to enjoin the President in the performance of his official duties.” *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866); *id.* at 500 (“The Congress is the legislative department of the government; the President is the executive department. Neither can be restrained in its action by the judicial department.”). A plurality of the Court later reiterated this principle in *Franklin v. Massachusetts*, 505 U.S. 788, 802–803 (1992). The plurality in *Franklin* found it “extraordinary” that the district court in that case had issued an injunction against the President and two other government officials. *Id.* at 802, 806. “At the threshold,” it said, “the District Court should have evaluated whether injunctive relief against the President was available, and if not, whether appellees’ injuries were nonetheless redressable.” *Id.* at 803. Concurring in *Franklin*, Justice Scalia explained that, under *Mississippi*, courts may impose neither injunctive nor declaratory relief against the President in his official capacity. *Id.* at 827–28 (noting that such principle is “a functionally mandated incident of the President’s unique office, rooted in the constitutional tradition of the separation of powers and supported by our history”). He reasoned that just as the President is absolutely immune from official capacity damages suits, so is he immune from efforts to enjoin him in his official capacity. *Id.* at 827

(“Many of the reasons [the Court] gave in *Nixon v. Fitzgerald*, [457 U.S. 731, 749 (1982)], for acknowledging an absolute Presidential immunity from civil damages for official acts apply with equal, if not greater, force to requests for declaratory or injunctive relief in official-capacity suits that challenge the President’s performance of executive functions”). The lower courts have often applied this settled principle. *See e.g., Swan v. Clinton*, 100 F.3d 973, 976 n.1 (D.C. Cir. 1996) (“similar considerations regarding a court’s power to issue [injunctive] relief against the President himself apply to [the] request for a declaratory judgment”); *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (“With regard to the President, courts do not have jurisdiction to enjoin him and have never submitted the President to declaratory relief.”) (citations omitted). Under that principle, the President should not be subject to discovery in this case.

Second, the Supreme Court has made clear that discovery directed to the President in civil litigation raises significant separation of powers concerns and should be strictly circumscribed. In *Cheney v. U.S. District Court for District of Columbia*, the Supreme Court explained that where the discovery requests were directed to the Vice President and other senior officials of the Executive Branch who gave advice and made recommendations to the President, it was “not a routine discovery dispute.” 542 U.S. 367, 385 (2004). The Court emphasized that “special considerations control when the Executive Branch’s interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated.” *Id.* at 385. The Supreme Court “has held, on more than one occasion, that ‘[t]he highest respect that is owed to the office of the Chief Executive ... is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery.’” *Id.* (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)). Further, the Court has held that the Executive’s “constitutional responsibilities and status [are] factors counseling judicial deference and

restraint” in the conduct of the litigation against it. *Id.* (quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 753 (1982)) (internal quotation marks omitted).

In *Cheney*, the district court permitted broad discovery directed to the Vice President and other senior officials, and the D.C. Circuit dismissed the government’s mandamus petition to vacate the district court’s discovery orders, holding that the government officials, “to guard against intrusion into the President’s prerogatives, must first assert privilege.” 542 U.S. at 375–76. In vacating the D.C. Circuit’s decision, the Supreme Court described as “anything but appropriate” the “overly broad discovery requests” directed to the Vice President and other senior officials, which were “unbounded in scope,” and asked for “everything under the sky.” *Id.* at 387–88 (“The Government [ ] did in fact object to the scope of discovery and asked the District Court to narrow it in some way. Its arguments were ignored.”). Noting the separation of powers concerns, the Supreme Court instructed the D.C. Circuit to analyze, on remand, whether the district court’s actions in permitting discovery against the Vice President and other senior officials constituted “an unwarranted impairment of another branch in the performance of its constitutional duties.” *Id.* at 390. It rejected the D.C. Circuit’s “mistaken assumption that the assertion of executive privilege is a necessary precondition to the Government’s separation-of-powers objections.” *Id.* at 391. *Cf. United States v. Poindexter*, 727 F. Supp. 1501, 1503–04 (D.D.C. 1989) (agreeing with the President that “it is undesirable as a matter of constitutional and public policy to compel a President to make his decision on privilege with respect to a large array of documents” and deciding to narrow, on its own, the scope of the discovery directed to the President). These separation of powers concerns were also recognized in *American Historical Association v. National Archives & Records Administration*. 402 F. Supp. 2d 171, 181 (D.D.C. 2005) (Kollar-Kotelly, J.). The Court there found the reasoning in *Cheney*



instructive, reiterating the *Cheney* Court's view that "special considerations control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated." *Id.* at 181 (quoting *Cheney*, 542 U.S. at 385) (internal quotation marks omitted).

In light of these compelling separation of powers concerns, the Court should, at a minimum, require Plaintiffs to exhaust alternative sources of discovery before subjecting the President to discovery. Indeed, on February 21, 2018—a mere two weeks from now—the Secretary of Defense is expected to submit an implementation plan to the President, which could narrow, if not completely eliminate, any purported reason for such broad discovery directed to the President. Military policy concerning transgender persons will be set forth in that plan, and any discovery, if permitted at all, into the basis for that policy should be directed at DoD in the first instance at that time. This timeline alone weighs heavily in favor of not subjecting the sitting President to discovery.

Finally, virtually all of the discovery directed to the President in this case is subject to the presidential communications privilege. The "presumptive privilege" that attaches to presidential communications is "fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution." *United States v. Nixon*, 418 U.S. 683, 708 (1974); *see In re Sealed Case*, 121 F.3d 729, 743 (D.C. Cir. 1997) (describing the privilege's "constitutional origins"). The privilege is broad, protecting the "confidentiality of Presidential communications in performance of the President's responsibilities." *United States v. Nixon*, 418 U.S. at 711. *See also In re Sealed Case*, 121 F.3d at 744 ("The *Nixon* cases establish the contours of the presidential communications privilege. The President can invoke the privilege when asked to produce documents or other materials that reflect presidential decisionmaking and

deliberations.”). Documents subject to the presidential communications privilege are shielded in their entirety, and the privilege “covers final and post-decisional material as well as pre-deliberative ones.” *In re Sealed Case*, 121 F.3d at 745.

Although the presidential communications privilege is not absolute, the bar to overcoming the privilege is high; it is “more difficult to surmount” than the deliberative process privilege. *In re Sealed Case*, 121 F.3d at 746. A party seeking otherwise privileged presidential material must demonstrate a “focused demonstration of need.” *Id.*; *See also Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1112 (D.C. Cir. 2004). Courts will balance “the public interests served by protecting the President’s confidentiality in a particular context with those furthered by requiring disclosure.” *In re Sealed Case*, 121 F.3d at 753. To meet this heavy burden of “specific need” in a criminal matter, the party seeking the privileged material must first demonstrate “that each discrete group of the subpoenaed materials likely contains important evidence”—that is, evidence “directly relevant to issues that are expected to be central to the trial,” and not evidence that is “only tangentially relevant or would relate to side issues.” *Id.* at 753–55. The party seeking the discovery must also show “that this evidence is not available with due diligence elsewhere”—that is, notwithstanding other sources of information, the privileged documents are “still needed.” *Id.* (explaining that this standard reflects the Supreme Court’s “insistence that privileged presidential communications should not be treated as just another source of information”).

Where privileged material is sought for use in a civil case, the burden to overcome the presidential communications privilege is even greater. The greater scrutiny is appropriate because “the right to production of relevant evidence in civil proceedings does not have the same ‘constitutional dimensions’” as a request for information in a criminal case. *Cheney*, 542 U.S. at

384 (quoting *United States v. Nixon*, 418 U.S. at 713); *see also Am. Historical Ass'n*, 402 F. Supp. 2d at 181 (explaining that the *Cheney* Court noted that “while withholding necessary materials in an ongoing criminal case constitutes an impermissible impairment of another branch’s essential functions, the same could not be said of document requests in the civil context”); *cf. Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc) (“[T]he sufficiency of the Committee’s showing must depend solely on whether the subpoenaed evidence is *demonstrably critical* to the responsible fulfillment of the Committee’s functions.”) (emphasis added).

In this case—a civil matter seeking discovery directly from the President, in his capacity as Commander-in-Chief, related to his decisionmaking process on a topic involving national security and military concerns—Plaintiffs face a significant burden in order to negate a valid assertion of the presidential communications privilege. Plaintiffs cannot meet this burden, especially where the requested discovery seeks information that, on its face, is privileged (including information about presidential communications, attorney-client and work product materials, and drafts of presidential documents) and would plainly intrude on core presidential deliberations, or where the requested discovery seeks information that could be sought from the Department of Defense or other sources, including publicly available ones.

Accordingly, Defendants object to any discovery requests directed to the President of the United States in this case based on these compelling separation of powers concerns, and in particular object to the discovery sought that is subject to the presidential communications privilege.

**Specific Objections to Requests for Admission**

**Request for Admission No. 1:**

Admit that on July 26, 2017, President Trump stated via Twitter that: “After consultation with my Generals and military experts, please be advised that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military. Our military must be focused on decisive and overwhelming victory and cannot be burdened with the tremendous medical costs and disruption that transgender in the military would entail. Thank you[.]”

**Specific Objections:**

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection. The Defendants’ answer to the complaint admitted, in paragraphs 80 and 81, that the President posted tweets on July 26, 2017.

**Request for Admission No. 2:**

Admit that on or before July 26, 2017, President Trump decided that “the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military[.]”

**Specific Objections:**

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFA to the extent that it seeks (a) communications or information protected by the attorney-client privilege; (b) communications or information

protected by the deliberative process privilege; or (c) communications or information protected by the presidential communications privilege.

The President also objects on the grounds that “decided” is vague and ambiguous, as well as undefined by Plaintiffs.

Request for Admission No. 3:

Admit that, prior to the President’s Twitter Statement, President Trump did not inform Secretary Mattis that the “United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.”

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFA to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 4:

Admit that, prior to the President’s Twitter Statement, President Trump did not inform General Joseph F. Dunford, Jr. that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 5:

Admit that, prior to the President's Twitter Statement, President Trump did not inform Lieutenant General H.R. McMaster that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 6:

Admit that President Trump did not inform Secretary Mattis that he would announce that "United States Government will not accept or allow Transgender individuals to serve in any

capacity in the U.S. military” prior to doing so on July 26, 2017.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 7:

Admit that President Trump did not inform General Joseph F. Dunford, Jr. that he would announce that “United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military” prior to doing so on July 26, 2017.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 8:

Admit that President Trump did not inform Lieutenant General H.R. McMaster that he would announce that “United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military” prior to doing so on July 26, 2017.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 9:

Admit that, between January 20, 2017, and July 26, 2017, Secretary Mattis did not recommend that President Trump adopt a policy that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.



Request for Admission No. 10:

Admit that, between January 20, 2017, and July 26, 2017, General Joseph F. Dunford did not recommend that President Trump adopt a policy that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 11:

Admit that, between January 20, 2017, and July 26, 2017, no member of the Joint Chiefs of Staff recommended that President Trump adopt a policy that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Request for Admission No. 12:

Admit that between January 20, 2017, and July 26, 2017, Lieutenant General H.R. McMaster did not recommend that President Trump adopt a policy that the United States Government will not accept or allow Transgender individuals to serve in any capacity in the U.S. military.

Specific Objections:

The President objects to any discovery requests directed to the President and incorporates by reference the above General Objection.

The President further objects to this RFP to the extent that it seeks (a) attorney work product; (b) communications or information protected by the attorney-client privilege; (c) communications or information protected by the deliberative process privilege; or (d) communications or information protected by the presidential communications privilege.

Dated: February 6, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that, on February 6, 2018, a copy of the document above was served by email on the following:

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