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

**JANE DOE 2 *et al.*,**

**Plaintiffs,**

**v.**

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

**Defendants.**

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

## NOTICE OF FILING OF REDACTED DOCUMENTS

On June 11, 2018, the Court entered a Minute Order granting Defendants' Consent Motion for Leave to File Documents under Seal, ECF No. 143, contingent on the parties filing mutually agreeable redacted versions of the documents at issue on the public docket by June 25, 2018. Pursuant to the Court's Minute Order, the parties have met and conferred and agreed to redactions to Defendants' Responses to Plaintiffs' Statement of Undisputed Material Facts and Exhibits 11 and 12, which are the declarations pertaining to Plaintiffs Jane Doe 2 and Jane Doe 7. These documents were previously filed under seal in support of Defendants' opposition to Plaintiffs' cross-motion for summary judgment, ECF No. 138. The redacted versions of these documents are attached to this notice.

Dated: June 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/ Andrew E. Carmichael*
ANDREW E. CARMICHAEL
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Telephone: (202) 514-3346
Email: andrew.e.carmichael@usdoj.gov

*Counsel for Defendants*

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

| | |
|---|---|
| **JANE DOE 2, *et al.*,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**DONALD J. TRUMP, *et al.*,**<br><br>**Defendants.** | **Civil Action No. 17-cv-1597 (CKK)** |

**DEFENDANTS' RESPONSES TO PLAINTIFFS'**
**STATEMENT OF UNDISPUTED MATERIAL FACTS**

Pursuant to Rule 7(h)(1) of the Local Rules of the United States District Court for the District of Columbia, Defendants, by undersigned counsel, respectfully submit the following response to Plaintiffs' Statement of Undisputed Material Facts ("Statement"). Subject to the following recurring objections, Defendants respond to Plaintiffs' Statement of Material Facts on the grounds identified in Table 1, which includes paragraph numbers for Defendants' responses that refer to the corresponding numbers in Plaintiffs' Statement.

1. Defendants object to Plaintiffs' Statement, filed in support of its Motion for Summary Judgment (Dkt. 131), for failure to identify "facts" that are "material" to its motion. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (explaining that a fact is "material" only if it "might affect the outcome of the suit under the governing law"). Rather than providing only material facts, Plaintiffs offer, instead, twenty-six pages of factual assertions, including general background information and matters otherwise immaterial to this case. "Irrelevant evidence is not admissible." Fed. R. Evid. 402.

2. Defendants object to Plaintiffs' Statement because Plaintiffs improperly include argument, opinions, characterizations, conclusory assertions, or conclusions of law. Local Rule

7(h)(i) requires that each assertion "include references to the parts of the record relied on to support the statement." Moreover, the Court's Scheduling and Procedures Order directs the parties to "furnish precise citations to the portions of the record on which they rely," and that the Court "need not consider materials not specifically identified." Dkt. 71 at 4 (citing Fed. R. Civ. P. 56(c)(1)(A), (c)(3)). Throughout the Statement, Plaintiffs include headings and conclusory assertions that contain no citation to the proper record (or any purported evidentiary material at all) and largely if not entirely constitute argument, opinions, characterizations, or conclusions of law. Defendants deny that any such heading or conclusory assertion constitutes an undisputed material fact. *See, e.g.*, *Glass v. Lahood*, 786 F. Supp. 2d 189, 198 (D.D.C. 2011) (disregarding plaintiff's statement of material facts because she "fails to support her response with citations to competent evidence in the record, electing instead to rely upon entirely conclusory and unsupported allegations that her supervisors were somehow guided by an improper motive").

3. Defendants object to Plaintiffs' Statement to the extent that Plaintiffs rely upon news articles, policy position papers, and internet webpages from third parties. A summary judgment motion must be supported by admissible evidence or evidence that is capable of being reduced to an admissible format. *See* Fed. R. Civ. P. 56(c)(2); *Akers v. Liberty Mut. Grp.*, 744 F. Supp. 2d 92, 96 (D.D.C. 2010). Plaintiffs' summary judgment exhibits that contain hearsay without an exception or lack authentication are inadmissible and should not be considered in support of Plaintiffs' motion. *See* Fed. R. Evid. 802 (hearsay not admissible except in circumstances not applicable here); *Carter v. District of Columbia*, 795 F.2d 116, 128 (D.C. Cir. 1986) ("The specific accounts of allegations contained in newspaper articles were themselves of no probative value"); *Akers*, 744 F. Supp. 2d at 96 ("'[S]heer hearsay . . . counts for nothing' on summary judgment") (citations omitted). Plaintiffs, as the proponent of evidence to support their summary judgment motion, bear the burden of establishing its admissibility. *See, e.g.*, *Austin Inv. Fund, LLC v. United States*, No. CV 11-2300 (CKK),

2015 WL 7303514, at *3 (D.D.C. Nov. 19, 2015) (one way for a movant to satisfy its burden of production is to cite "specific parts of the record – including deposition testimony, documentary evidence, affidavits or declarations, or other competent evidence – in support of its position"); *see also Laningham v. U.S. Navy*, 813 F.2d 1236, 1241 (D.C. Cir. 1987) ("[T]he court must determine first whether the moving party has met its burden of production…."). Because the assertions are not supported by admissible evidence, they should not be considered in support of Plaintiffs' summary judgment motion.

June 6, 2018

Respectfully Submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

BRETT A. SHUMATE
Deputy Assistant Attorney General

BRINTON LUCAS
Counsel to the Assistant Attorney General

JOHN R. GRIFFITHS
Branch Director

ANTHONY J. COPPOLINO
Deputy Director

/s/ *Andrew E. Carmichael*
ANDREW E. CARMICHAEL
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
Tel: (202) 514-3346
Email: andrew.e.carmichael@usdoj.gov

*Counsel for Defendants*

**Table A: Defendants' Responses to Plaintiffs' Statement[1]**

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| 1. | On May 11, 2014, then-Secretary of Defense Chuck Hagel announced that the military's policy on transgender service "should be reviewed." He also indicated that he was "open" to having transgender people serve. Secretary Hagel said that "[e]very qualified American who wants to serve our country should have an opportunity if they fit the qualifications and can do it." | Defendants dispute the assertions in this paragraph because they are not material facts, as stated in recurring objection 1, and because they are based on, or constitute, hearsay inadmissible for the truth of the matter asserted, as stated in recurring objection 3. |
| 2. | On August 5, 2014, the Department of Defense re-issued Department of Defense Instruction (DODI) 1332.18, entitled "Disability Evaluation System (DES)." DODI 1332.18 "[e]stablishes policy, assigns responsibilities, and provides procedures for referral, evaluation, return to duty, separation, or retirement of Service members for disability . . . ." The updated version of DODI 1332.18 eliminated "sexual gender and identity disorders, including sexual dysfunctions and paraphilias" as conditions that automatically triggered administrative separation. | Subject to recurring objection 1, the first sentence is undisputed.<br><br>Subject to recurring objection 1, Defendants do not dispute that Plaintiffs' Exhibit B is a true and correct copy of DoDI 1332.18, dated August 5, 2014, or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit B for a complete and accurate statement of the purpose of DoDI 1332.18.<br><br>The third sentence is disputed. Plaintiffs cite Exhibit B (Dkt. 128-2) of the declaration of L. Godles Milgroom to support their assertion; however, that exhibit does not contain DoDI 1332.38, as Plaintiffs' citation indicates. The instruction in Exhibit B, DoDI 1332.18, states only that it "[i]ncorporates and cancels DoDI 1332.38." *See* Dkt. 128-2 at ¶ 1.c. Defendants respectfully refer the Court to Plaintiffs' Exhibit B for a complete and accurate statement of the contents of DoDI 1332.18. In addition, Defendants object to Plaintiffs reliance on a policy position paper for the reasons in recurring objection 3, and also |

[1] Where Plaintiffs' Statement identifies a source for a statement, the Statement typically appears in a footnote. If Defendants included those footnotes, this response would be difficult to read. For this reason, Defendants have endeavored to include the sources for Plaintiffs' assertions in the response where feasible.

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | because the position paper primarily consists of legal argument and conclusions, which are outside of the scope of even expert testimony. *See U.S. ex rel. Mossey v. Pal-Tech, Inc.*, 231 F. Supp. 2d 94, 98 (D.D.C. 2002) (citing *Burkhart v. Wash. Metro. Area Transit Auth.*, 112 F.3d 1207, 1212–13 (D.C. Cir. 1997)) ("It is established, however, that expert testimony consisting of legal conclusions will not be permitted because such testimony merely states what result should be reached, thereby improperly influencing the decisions of the trier of fact and impinging upon the responsibilities of the court."); *see also* Fed. R. Evid. 702. |
| 3. | Secretary Hagel was succeeded as Secretary of Defense by Ashton B. Carter, who had served previously as Deputy Secretary of Defense, Under Secretary of Defense for Acquisition, Technology and Logistics, Assistant Secretary of Defense for International Security Policy. | Defendants dispute the assertions in this paragraph because they are not material facts, as stated in recurring objection 1, and because the paragraph contains no citation to the proper record (or any purported evidentiary material at all), as stated in recurring objection 2. |
| 4. | In July 2015, Secretary Carter directed that "decision authority in all administrative discharges for those diagnosed with gender dysphoria or who identif[ied] themselves as transgender [would] be elevated to Under Secretary Carson, who [would] make determinations on all potential separations." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Dkt. 115-2 is a true and correct copy of Department of Defense Press Release No.: NR-272-15 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Dkt. 115-2 for a complete and accurate statement of its contents.<br><br>Defendants dispute the characterization of Secretary Carter's actions, however, because it is incomplete. As stated in a memorandum for the Secretaries of the Military Departments, dated July 28, 2015, Secretary Carter directed that "no Service member shall be involuntarily separated or denied reenlistment or continuation of active or reserve service on the basis of their gender identity without the |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | personal approval of the Under Secretary of Defense for Personnel and Readiness." Exh. 1. The memorandum further directed that this "approval authority may not be further delegated." *Id.* |
| 5. | Secretary Carter also announced that the Department of Defense would "create a working group to study over the next six months the policy and readiness implications of welcoming transgender persons to serve openly" (the "Working Group"). | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Secretary Carter directed the creation of a Department of Defense working group. Defendants dispute in part the assertions in this paragraph because they are incomplete. In addition to the statement regarding the creation of the working group, the Press Release states that Secretary Carter directed the working group to "start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness, unless and except where objective, practical impediments are identified." Defendants respectfully refer the Court to Dkt. 115-2 for a complete and accurate statement of the contents of the Press Statements and Exh. 1 for a complete and accurate statement of Secretary Carter's direction to the Military Services. |
| 6. | The Working Group consisted of "[t]he leadership of the armed services, the Joint Chiefs of Staff, the service secretaries, [Secretary Carter], [and] personnel, training, readiness and medical specialists from across the Department of Defense." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Plaintiffs' Exhibit D is a true and correct copy of a Department of Defense press release. Defendants respectfully refer the Court to Plaintiffs' Exhibit D for a complete and accurate statement of its contents, and Exh. 1 for a complete and accurate statement of Secretary Carter's direction regarding the membership of the working group.<br><br>Defendants dispute Plaintiffs' reliance on the findings of fact in the Court's memorandum opinion on Plaintiffs' motion for preliminary injunction. The "findings of fact and |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits," *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1985) (citing *Indus. Bank of Wash. v. Tobriner*, 405 F.2d 1321, 1324 (D.C. Cir. 1968)), and therefore are not "facts" that can properly substantiate a motion for summary judgment. |
| 7. | The Working Group "got input from transgender service members, from outside expert groups, and from medical professionals outside of the department." The Working Group also looked to the experiences of "allied militaries that already allow transgender service members to serve openly" and "the private sector." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Plaintiffs' Exhibit D is a true and correct copy of a Department of Defense press release or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit D for a complete and accurate statement of its contents. |
| 8. | The members of the Working Group "sought to identify any possible issues related to open military service of transgender individuals." | Disputed. Contrary to Plaintiffs' assertion, the working group's mandate was not to "identify any possible issues related to open military service of transgender individuals." Rather, Secretary Carter instructed the working group to "start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness" and directed the working group to reach that conclusion "unless and except" the working group "identified" "objective, practical impediments" to Secretary Carter's directive "within 180 days." Exh. 1; *see also* Report 13, Dkt. 96-2. The assertion in this paragraph is also not material fact, as stated in recurring objection 1. |
| 9. | The Department of Defense also commissioned the RAND Corporation "[t]o assist in identifying the potential implications" of allowing military service by transgender people. | Disputed. Contrary to the assertion, the RAND study's mandate was limited to three discrete issues: "(1) identify the health care needs of the transgender population, trans gender service members' potential health care utilization rates, and the costs associated with extending health care coverage for transition- |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | related treatments; (2) assess the potential readiness impacts of allowing transgender service members to serve openly; and (3) review the experiences of foreign militaries that permit transgender service members to serve openly." RAND Report 1, Dkt. 13-4. The assertion in this paragraph is also not material fact, as stated in recurring objection 1. |
| 10. | The RAND Corporation began as "Project RAND—an organization formed immediately after World War II to connect military planning with research and development decisions." Today, RAND "is a nonprofit institution that helps improve policy and decisionmaking through research and analysis . . . As a nonpartisan organization, RAND is widely respected for operating independent of political and commercial pressures." | Defendants dispute the assertions in this paragraph because they are not material facts, as stated in recurring objection 1, and because they are based on, or constitute, hearsay inadmissible for the truth of the matter asserted, as stated in recurring objection 3. |
| 11. | As part of the process initiated by Secretary Carter, the RAND Corporation was specifically tasked with "(1) identify[ing] the health care needs of the transgender population, transgender service members' potential health care utilization rates, and the costs associated with extending health care coverage for transition-related treatments; (2) assess[ing] the potential readiness implications of allowing transgender service members to serve openly; and (3) review[ing] the experiences of foreign militaries that permit transgender service members to serve openly." | Defendants do not dispute that Exhibit B in Dkt. 13-4 is a true and correct copy of the RAND Report or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents. |
| 12. | The resulting study, titled "Assessing the Implications of Allowing Transgender Personnel to Serve Openly" (the "RAND Study") and | Defendants do not dispute that Exhibit B in Dkt. 13-4 is a true and correct copy of the RAND Report or that Plaintiffs accurately quote a portion of that document. Defendants |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | issued in May 2016, "found no evidence that allowing transgender individuals to serve would have any effect on 'unit cohesion,' and concluded that any related costs or impacts on readiness would be 'exceedingly small,' 'marginal' or 'negligible.'" | respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents.<br><br>Defendants dispute Plaintiffs' characterization of RAND's findings, which noted that "there are limited data on the effects of transgender personnel serving openly" and that the lack of data "may be a factor" that influenced RAND's finding of a "limited effect on operational readiness and cohesion." RAND Report 45, Dkt. 13-4. |
| 13. | The RAND Study reported that the "main types of gender transition-related treatments are psychosocial, pharmacologic (primarily but not exclusively hormonal), and surgical." It stated that "[b]oth psychotherapy and hormone therapies are available and regularly provided through the military's direct care system." Further, "[r]econstructive breast/chest and genital surgeries are currently performed on patients who have had cancer, been in vehicular and other accidents, or been wounded in combat. The skills and competencies required to perform these procedures on transgender patients are often identical or overlapping." Finally, "the services have requirements and manpower authorizations for specialists who can perform reconstructive plastic surgery." | Defendants do not dispute that Exhibit B in Dkt. 13-4 is a true and correct copy of the RAND Report or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents. |
| 14. | For the "large majority" of transgender service members' medical care needs, the Military Health System (MHS) "provid[es] the same or substantially similar services to other service members." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendant denies that this is an undisputed material fact. First, Defendants dispute the allegations in the statement because the contentions of Margaret C. Wilmoth are not supported with a proper evidentiary |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | foundation. Margaret Wilmoth does not provide any citations to support her opinions. Second, Margaret Wilmoth states, without citation to any report, that these are the conclusions of the Transgender Working Group which met from the summer of 2015 through the final meeting in late spring. Wilmoth Decl. ¶ 11, Dkt. 13-13. The report or final memorandum of the Transgender Service Review Work Group is the best evidence of the working groups' conclusions. Absent "independent verification ... [the] declaration is self-serving and uncorroborated." *Gen. Elec. Co. v. Jackson*, 595 F. Supp. 2d 8, 36 (D.D.C. 2009). "Such declarations are of little value at the summary judgment stage, and certainly do not represent concrete evidence ...." *Id.* (citation omitted). Even if the declarant correctly reports the working group's final findings, the group reached its findings without considering actual data from service members diagnosed with gender dysphoria because that data did not become available until after June 30, 2016. *See* Report 32, Dkt. 96-2. Third, the working group was directed because that group was directed to "start with the presumption that transgender persons can serve openly without adverse impact on military effectiveness and readiness" and directed the working group to reach that conclusion "unless and except" the working group "identified" "objective, practical impediments" to Secretary Carter's directive "within 180 days." Exh. 1; *see also* Report 13, Dkt. 96-2. Because medical data from service members diagnosed with gender dysphoria was not available to the Working Group the presumption controlled the outcome of any findings. Fourth, the Working Group's findings are based on a dramatic underestimation of the transition-related health care needs of service members diagnosed with gender dysphoria. For example, the RAND report estimated that between 29 and 129 active duty service |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | members would seek transition-related health care annually. RAND Report xi, Dkt. 13-4. In reality, 937 service members had been diagnosed with gender dysphoria in the approximately eighteen months between June 30, 2016, and when the panel of experts conducted its review—nearly five times the upper bound of RAND's estimate. Report 32, Dkt. 96-2. Fifth, Plaintiffs may not use Margaret Wilmoth to provide expert testimony, because she lacks the relevant expertise to be qualified as an expert witness under Fed. R. Evid. 702. Margaret Wilmoth's declaration indicates that her specialty is psychosocial oncology, Dkt. 13-13 ¶ 9, and it does not indicate that she has any special training or experience in the treatment of gender dysphoria. *See Rothe Dev., Inc. v. Dep't of Defense*, 107 F. Supp. 3d 183, 203 (D.D.C. 2015) (excluding on cross-motions for summary judgment expert testimony because expert lacked training, education, knowledge, skill or experience in subject matter at issue). In fact, her declaration specifically indicates that she does not have a background in the treatment gender dysphoria. *See* Wilmoth Decl. ¶ 13, Dkt. 13-13 ("We educated ourselves by meeting with experts from the civilian sector so we could begin to understand what being transgender means."). |
| 15. | The RAND Study concluded that health care costs for transgender service members would represent "an exceedingly small proportion of . . . overall DoD [Department of Defense] health care expenditures." | Defendants do not dispute that Exhibit B in Dkt. 13-4 is a true and correct copy of the RAND Report or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to the RAND Report for a complete and accurate statement of its contents.<br><br>Defendants dispute Plaintiffs' characterization of RAND's health care utilization estimates, which were based on two analytical approaches. RAND Report 19, Dkt. 13-4. The first approach "estimated the prevalence |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | of transgender individuals in the military" and extrapolated "implied cost" from "information on rates of gender transition and reported preferences for different medical treatments." *Id.* RAND conceded that this approach "suffers from a lack of rigorous evidence" and relies on prevalence measures from only two states "that may not be directly applicable to military populations." *Id.* The second approach used "measures of utilization based on health insurance claims." *Id.* RAND conceded, however, that its second approach "suffers from a lack of large-scale evidence and instead relies on several case studies that may not be directly applicable to the U.S. military." *Id.*<br><br>RAND's conclusions regarding health care costs assumed that "only a small proportion of these service members will seek gender transition-related treatment each year." RAND Report 69, Dkt. 13-4. However, subsequently collected data from the Department of Defense demonstrates that RAND's assumption was incorrect. *See* Exh. 7. *See also* Report 21–22, Dkt. 96-2. |
| 16. | The Working Group concluded that "banning service by openly transgender persons would require the discharge of highly trained and experienced service members, leaving unexpected vacancies in operational units and requiring the expensive and time-consuming recruitment and training of replacement personnel." | Subject to recurring objection 1 that the assertion in this paragraph is not a material fact, disputed in part. The assertion in this paragraph is incomplete because Secretary Carter instructed the working group to reach the conclusion that "transgender persons can serve openly without adverse impact on military effectiveness and readiness" "unless and except" the working group "identified" "objective, practical impediments" to Secretary Carter's directive "within 180 days." Exh. 1.; *see also* Report 13, Dkt. 96-2. |
| 17. | The Working Group further concluded that "banning service by openly transgender persons would harm the military by excluding | Defendants dispute the assertions in this paragraph because they are not material facts, as stated in recurring objection 1, and because the paragraph contains no citation to the |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | qualified individuals based on a characteristic with no relevance to a person's fitness to serve." | proper record (or any purported evidentiary material at all), as stated in recurring objection 2. Defendants further dispute this paragraph because the assertion in Mr. Carson's declaration lacks any citation to the working group findings. The report or final memorandum of the Transgender Service Review Work Group is the best evidence of the working groups' conclusions. Absent "independent verification ... [the] declaration is self-serving and uncorroborated." *Gen. Elec. Co. v. Jackson*, 595 F. Supp. 2d 8, 36 (D.D.C. 2009). "Such declarations are of little value at the summary judgment stage, and certainly do not represent concrete evidence ...." *Id.* (citation omitted). |
| 18. | By April 2016, the Working Group had "unanimously concluded that transgender people should be allowed to serve openly in the military." | Defendants dispute Plaintiffs' reliance on the findings of fact in the Court's memorandum opinion on Plaintiffs' motion for preliminary injunction. The "findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits," *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1985) (citing *Indus. Bank of Wash. v. Tobriner*, 405 F.2d 1321, 1324 (D.C. Cir. 1968)), and therefore are not "facts" that can properly substantiate a motion for summary judgment.<br><br>The assertion in this paragraph is also disputed on the grounds in recurring objection 1, because it is not a material fact, and also because it is incomplete. Secretary Carter instructed the working group to reach the conclusion that "transgender persons can serve openly without adverse impact on military effectiveness and readiness" "unless and except" the working group "identified" "objective, practical impediments" to Secretary Carter's directive "within 180 days." Exh. 1; *see also* Report 13, Dkt. 92-6. The report or final memorandum of the Transgender Service |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | Review Work Group is the best evidence of the working groups' conclusions. |
| 19. | Approximately one year after Secretary Carter's July 2015 announcement, on June 30, 2016, Secretary Carter announced that the Department of Defense would "eliminate[e] policies that [could] result in transgender members being treated differently from their peers based solely upon their gender identity, rather than upon their ability to serve." Secretary Carter stated: "[e]ffective immediately, transgender Americans may serve openly. They can no longer be discharged or otherwise separated from the military just for being transgender." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Plaintiffs' Exhibit D is a true and correct copy of a Department of Defense press release or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to the press release for a complete and accurate statement of its contents. |
| 20. | Secretary Carter further stated, "the Defense Department and the military need to avail ourselves of all talent possible in order to remain what we are now, the finest fighting force the world has ever known." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Plaintiffs' Exhibit D is a true and correct copy of a Department of Defense press release or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to the press release for a complete and accurate statement of its contents. |
| 21. | In his June 30, 2016 announcement, Secretary Carter explained that the open service policy was based on a number of considerations, including: the need to "recruit[] and retain[] the soldier, sailor, airman, or Marine who can best accomplish the mission" of our nation's Armed Forces; the fact that thousands of "talented and trained" transgender people are already serving and that the military has already invested | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Plaintiffs' Exhibit D is a true and correct copy of a Department of Defense press release or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to the press release for a complete and accurate statement of its contents. |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | "hundreds of thousands of dollars to train and develop each" transgender service member; the benefits to the military of retaining individuals who are already trained and who have already proven themselves; the need to provide both transgender service members and their commanders with "clear[] and consistent guidance" on questions such as deployment and medical treatment; and the principle that "Americans who want to serve and can meet our standards should be afforded the opportunity to compete to do so." | |
| 22. | Also on June 30, 2016, Secretary Carter issued Directive-Type Memorandum (DTM) 16-005, titled "Military Service of Transgender Service Members." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. |
| 23. | The DTM states: "The policy of the Department of Defense is that service in the United States military should be open to all who can meet the rigorous standards for military service and readiness. Consistent with the policies and procedures set forth in this memorandum, transgender individuals shall be allowed to serve in the military. These policies and procedures are premised on my conclusion that open service by transgender Service members while being subject to the same standards and procedures as other members with regard to their medical fitness for duty, physical fitness, uniform and grooming, deployability, and retention, is | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | consistent with military readiness and with strength through diversity." | |
| 24. | DTM 16-005 states that it is "the Department's position, consistent with the U.S. Attorney General's opinion, that discrimination based on gender identity is a form of sex discrimination." | Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents.<br><br>Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1, and also because the quoted portion of the DTM references a December 15, 2014 memorandum by former Attorney General Holder that has been withdrawn by the Department of Justice. *See* Exh. 8, Attorney General Memorandum, October 4, 2017, subject: Revised Treatment of Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964. Attorney General Sessions' October 4, 2017 memorandum concludes that "Title VII's prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity per se, including transgender status." *Id.* |
| 25. | Regarding separation and retention, the DTM states: "Transgender Service members will be subject to the same standards as any other Service member of the same gender; they may be separated, discharged, or denied reenlistment or continuation of service under existing processes and basis, but not due solely to their gender identity or an expressed intent to transition genders." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. |
| 26. | Also regarding separation and retention, the DTM states: "A | Subject to recurring objection 1 because this paragraph does not contain a material fact, |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | Service member whose ability to serve is adversely affected by a medical condition or medical treatment related to their gender identity should be treated, for purposes of separation and retention, in a manner consistent with a Service member whose ability to serve is similarly affected for reasons unrelated to gender identity or gender transition." | otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. |
| 27. | Regarding accessions, the DTM states that a history of gender dysphoria would no longer disqualify an applicant from acceding into the military if that applicant was certified by a licensed medical provider as "stable without clinically significant distress or impairment in social, occupational, or other important areas of functioning for 18 months." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. |
| 28. | Also regarding accessions, the DTM stated that a history of medical treatment associated with gender transition would no longer be disqualifying if a medical provider certified the applicant had "completed all medical treatment associated with the applicant's gender transition," "been stable in the preferred gender for 18 months," and, if the applicant was "receiving cross-sex hormone therapy post-gender transition, [that] the individual [had] been stable on such hormones for 18 months." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. |
| 29. | Finally, regarding accessions, the DTM established that a history of sex reassignment surgery or genital reconstruction surgery would no longer be disqualifying if a licensed medical provider certified that "a period of 18 months [had] elapsed | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | since the date of the most recent of any such surgery; and [] no functional limitations or complications persist[ed], nor [was] any additional surgery required." | DTM 16-005 for a complete and accurate statement of its contents. |
| 30. | The Carter policy for accessions as outlined in DTM 16-005 was scheduled to take effect on July 1, 2017. | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Exhibit C to Dkt. 13-10 is a true and correct copy of DTM 16-005. Defendants respectfully refer the Court to DTM 16-005 for a complete and accurate statement of its contents. |
| 31. | In accordance with DTM 16-005, the Acting Assistant Secretary of Defense for Health Affairs issued a memorandum entitled "Guidance for Treatment of Gender Dysphoria for Active and Reserve Component Service Members" to "provide [] guidance for the medical care of transgender Service members." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Plaintiffs' Exhibit F is a true and correct copy of a memorandum from the Acting Assistant Secretary of Defense for Health Affairs dated July 29, 2016. Defendants respectfully refer the Court to the memorandum for a complete and accurate statement of its contents. |
| 32. | On June 30, 2016, the Office of the Undersecretary of Defense for Personnel and Readiness issued "DoD Instruction 1300.28—In-Service Transition for Transgender Service Members." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Plaintiffs' Exhibit G is a true and correct copy of DoDI 1300.28, dated June 30, 2016. Defendants respectfully refer the Court to Plaintiffs' Exhibit G for a complete and accurate statement of its contents. |
| 33. | The effective date for the Instruction was October 1, 2016. | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise undisputed. |
| 34. | The Instruction "implement[ed] the policies and procedures in [DTM] 16-005," including by providing details on "Gender Transition in the Military" and "Continuity of Medical | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Plaintiffs' Exhibit G is a true and correct copy of DoDI 1300.28, dated June 30, 2016, or that |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | care" for transgender service members. | Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit G for a complete and accurate statement of its contents. |
| 35. | DODI 1300.28 established that once a "military medical provider determine[d] that a Service member's gender transition [was] complete . . . the member's gender marker [would be] changed in DEERS [Defense Enrollment Eligibility Reporting System] and the Service member [would] be recognized in the preferred gender." | Subject to recurring objection 1 because this paragraph does not contain a material fact, Defendants do not dispute that Plaintiffs' Exhibit G is a true and correct copy of DoDI 1300.28, dated June 30, 2016, or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit G for a complete and accurate statement of its contents. |
| 36. | Under 1300.28, all service members, regardless of whether they had changed their DEERS gender marker, were required to meet all standards "[c]oincident with [their] gender marker." | Subject to recurring objection 1 because this paragraph does not contain a material fact, Defendants do not dispute that Plaintiffs' Exhibit G is a true and correct copy of DoDI 1300.28, dated June 30, 2016, or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit G for a complete and accurate statement of its contents. |
| 37. | In September 2016, the Department of Defense issued an implementation handbook entitled "Transgender Service in the United States Military" (the "Handbook"). The 71-page document set forth guidance and instructions to both military service members and commanders about how to implement and understand the new policies regarding transgender service members and how to address any service level issues that would arise. | Subject to recurring objection 1 because this paragraph does not contain a material fact, Defendants do not dispute that Exhibit D of Dkt. 13-6 is a true and correct copy of the Carter Policy Implementation Handbook. Defendants respectfully refer the Court to Exhibit D of Dkt. 13-6 for a complete and accurate statement of its contents. |
| 38. | The Handbook instructs all service members: "The cornerstone of DoD values is treating every Service | Subject to recurring objection 1 because this paragraph does not contain a material fact, Defendants do not dispute that Exhibit D of |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | member with dignity and respect. Anyone who wants to serve their country, upholds our values, and can meet our standards, should be given the opportunity to compete to do so. Being a transgender individual, in and of itself, does not affect a Service member's ability to perform their job." | Dkt. 13-6 is a true and correct copy of the Carter Policy Implementation Handbook or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Exhibit D of Dkt. 13-6 for a complete and accurate statement of its contents. |
| 39. | Between October 2016 and June 2017, the services conducted training of the force based on detailed guidance and training materials regarding the Carter policy on transgender military service. | Subject to recurring objections 1 because this paragraph does not contain a material fact, Defendants do not dispute that Plaintiffs' Exhibit I is a true and correct copy of an Air Force presentation, Plaintiffs' Exhibit J is a true and correct copy of an Air Force policy memorandum, dated October 6, 2016, or that Plaintiffs' Exhibit L is a true and correct copy of Secretary of the Navy Instruction 1000.11. Defendants respectfully refer the Court to Plaintiffs' Exhibits I, J, and L for a complete and accurate statement of their content. |
| 40. | On November 29, 2016, the Department of Defense revised "DoD Directive 1020.02E—Diversity Management and Equal Opportunity in the DoD," amending the definition of "unlawful discrimination" to include discrimination "on the basis of . . . sex (including gender identity)." | Subject to recurring objection 1 because this paragraph does not contain a material fact, otherwise Defendants do not dispute that Plaintiffs' Exhibit M is a true and correct copy of the DoDD 1020.02E that incorporates only change 1, dated November 29, 2016, which was implemented as part of the Carter policy. DoDD 1020.02E has been revised subsequently. Defendants respectfully refer the Court to Plaintiffs' Exhibit D for a complete and accurate statement of contents of the November 29, 2016 version of DoDD 1020.02E. |
| 41. | On June 30, 2017, the day before the policy permitting transgender people to accede to the military was to take effect, Secretary Mattis announced that he had "determined that it [was] necessary to defer the start of accessions for six months." | Defendants do not dispute that Plaintiffs' Exhibit N is a true and correct copy of a June 30, 2017 memorandum from Secretary Mattis. Defendants dispute, however, Plaintiffs' characterization of cited memorandum. In the memorandum, Secretary Mattis states that, although "accessions were anticipated to begin |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | on July 1, 2017," he determined that it was "necessary to defer the start of accessions for six months" after "consulting with the Service Chiefs and Secretaries." Pls. Ex. N. Defendants also dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1. |
| 42. | On July 26, 2017, President Trump announced in a series of tweets 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[.]" | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1. |
| 43. | The same day the President issued his tweets, the Office of the Secretary of Defense issued guidance to "pause surgeries and gender marker changes." | Disputed. On July 27, 2017, the Chairman of the Joint Chiefs of Staff issued a memorandum, stating that there "will be no modifications to the current policy until the President's direction has been received by the Secretary of Defense and the Secretary has issued implementation guidance." Exh. 9, Dunford Mem.; *see also* Plaintiffs' Exhibit S. Subsequently, the August 25, 2017 Presidential Memorandum provided for specific future effective dates for policy changes regarding transgender surgery and gender marker changes. 2017 Mem., 82 Fed. Reg. 41319 (Aug. 25, 2017). Following that, the Secretary of Defense issued a memorandum on September 14, 2017, that specifically provided that the prior policy on medical care and in-service transition remained in effect. Dkt. 45-1. Then, on November 13, 2017, the Director of the Defense Health Agency issued a memorandum confirming that the July 2016 medical guidance had not been |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | changed and remained in effect. Exh. 10, DHA Mem. |
| 44. | Senator John McCain, Chairman of the Senate Armed Services Committee and a decorated combat veteran of the Navy, said in a statement that "there [was] no reason to force servicemembers who are able to fight, train, and deploy to leave the military—regardless of their gender identity." A spokesperson for Senator Joni Ernst, another Republican member of the Senate Armed Services Committee and a combat veteran who served in the Iowa National Guard, told the Des Moines Register that the Senator believes "Americans who are qualified and can meet the standards to serve in the military should be afforded that opportunity. | Defendants dispute the assertions in both sentences because they are not material facts, as stated in recurring objection 1, and because they are based on, or constitute, hearsay inadmissible for the truth of the matter asserted, as stated in recurring objection 3. |
| 45. | General Joseph Dunford, the Chairman of the Joint Chiefs of Staff and the President's most senior uniformed military advisor, said that the President's announcement was "unexpected" and that that he "was not consulted." | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1. |
| 46. | After the President issued his Tweets on July 26, 2017, the Office of the Secretary of Defense (OSD) began "develop[ing] COAs [Courses of Action] in response to the tweet anticipating OSD being asked for policy recommendations." | Disputed because this paragraph inaccurately characterizes and summarizes Plaintiffs' Exhibit S, which refers to a transgender working group. Defendants respectfully refer the Court to Plaintiffs' Exhibit S for a complete and accurate statement of its contents |
| 47. | Shortly after the President's tweeted announcement, fifty-six former generals and admirals issued a public statement denouncing the new policy. | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1, and because the paragraph is supported solely by a third-party letter which constitutes inadmissible hearsay, as stated in recurring objection 3. |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | |
| 48. | On August 25, 2017, the President released a memorandum ("August 25 Memorandum") containing a formal directive to the Secretary of Defense and the Secretary of Homeland Security. It directed the military "to return to the longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016," effective March 23, 2018. | Defendants do not dispute that Plaintiffs' Exhibit T is a true and correct, but unsigned, copy of the August 25, 2017 Presidential memorandum. Defendants respectfully refer the Court to Plaintiffs' Exhibit T for a complete and accurate statement of its contents. |
| 49. | The August 25 Memorandum required the ban on accessions to be extended indefinitely beyond January 1, 2018 and halted all use of government resources to "fund sex-reassignment surgical procedures for military personnel, except to the extent necessary to protect the health of an individual who has already begun a course of treatment to reassign his or her sex," effective March 23, 2018. | Disputed because this paragraph inaccurately characterizes and summarizes the August 25, 2017 Presidential memorandum. The statement that the memorandum extended a ban on accessions "indefinitely beyond January 1, 2018" is inaccurate. In fact, the memorandum stated that the accession policy would be maintained "until such time as the Secretary of Defense, after consulting with the Secretary of Homeland Security, provides a recommendation to the contrary that I find convincing…" Pls. Ex. T. Defendants respectfully refer the Court to the August 25, 2017 memorandum for a complete and accurate statement of its contents. |
| 50. | The August 25 Memorandum also required the Secretary of Defense, in consultation with Homeland Security, to "submit to [the President] a plan for implementing both the general policy set forth in . . . this memorandum and the specific directives set forth in . . . this memorandum" by February 21, 2018. | Defendants do not dispute that Plaintiffs' Exhibit T is a true and correct, but unsigned, copy of the August 25, 2017 Presidential memorandum. Defendants respectfully refer the Court to Plaintiffs' Exhibit T for a complete and accurate statement of its contents. |
| 51. | The August 25 Memorandum reversed the policies that had gone into effect in June 2016, 2017 | Defendants dispute this paragraph because Plaintiffs rely on the findings of fact in the Court's memorandum opinion on Plaintiffs' motion for preliminary injunction. The |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | regarding transgender military service. | "findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits," *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1985) (citing *Indus. Bank of Wash. v. Tobriner*, 405 F.2d 1321, 1324 (D.C. Cir. 1968)), and therefore are not "facts" that can properly substantiate a motion for summary judgment. |
| 52. | On August 29, 2017, Secretary Mattis issued Release No. NR-312-17, stating that the Department of Defense will "carry out the president's policy direction, in consultation with the Department of Homeland Security." | Defendants do not dispute that Plaintiffs' Exhibit U is a true and correct Department of Defense press release or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit U for a complete and accurate statement of its contents. |
| 53. | On October 30, 2017, this Court issued a preliminary injunction that ordered Defendants to "revert to the status quo with regard to accession and retention that existed before the [August 25, 2017] issuance of the Presidential Memorandum." Pursuant to that order, the Armed Forces began permitting openly transgender people to accede to the services beginning on January 1, 2018. | Subject to recurring objection 1 because this paragraph does not contain a material fact, Defendants do not dispute that Plaintiffs' Exhibit V is a true and correct copy of Policy Memorandum 2-5, dated December 8, 2017, or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit V for a complete and accurate statement of its contents. |
| 54. | On September 14, 2017, Secretary of Defense Mattis issued a Memorandum. In that document, Secretary Mattis affirmed: "DoD will carry out the President's policy and directives" and will "comply with" the President's August 25 Memorandum. Mattis stated: "[n]ot later than February 21, 2018, [he would] present the President with a plan to implement the policy and the directives in the Presidential Memorandum." | Defendants do not dispute that Plaintiffs' Exhibit W is a true and correct copy of the Interim Guidance or that Plaintiffs accurately quote a portion of that document. Defendants dispute Plaintiffs' characterization of the Interim Guidance. In the guidance, Secretary Mattis stated that the plan he intended to propose to the President "will establish the policy, standards and procedures for service by transgender individuals in the military," and that the proposed plan would be "[c]onsistent with military readiness, lethality, deployability, budgetary constraints, and applicable law." Pls.' Ex. W. Defendants respectfully refer the |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | Court to Plaintiffs' Exhibit W for a complete and accurate statement of its contents. |
| 55. | In a separate Memorandum entitled "Terms of Reference – Implementation of Presidential Memorandum on Military Service by Transgender Individuals" ("Terms of Reference"), also issued on September 14, 2017, Secretary Mattis "direct[ed] the Deputy Secretary of Defense and the Vice Chairman of the Joint Chiefs of Staff to lead the [Department] in developing an Implementation Plan on military service by transgender individuals, to effect the policy and directives in Presidential Memorandum, Military Service by Transgender Individuals, dated August 25, 2017." | Defendants do not dispute that Plaintiffs' Exhibit X is a true and correct copy of Secretary Mattis's Terms of Reference or that Plaintiffs accurately quote a portion of that document. Defendants dispute Plaintiffs' characterization of the Terms of Reference. In that document, Secretary Mattis directed that the proposed plan "will establish the policy, standards and procedures for service by transgender individuals in the military, consistent with readiness, lethality, deployability, budgetary constraints, and applicable law." Pls.' Ex. X at USDOE00003230. Defendants respectfully refer the Court to Plaintiffs' Exhibit X for a complete and accurate statement of its contents. |
| 56. | The Terms of Reference required that the Deputy Secretary and Vice Chairman would be "supported by a panel" comprised of "the Military Department Under Secretaries, Service Vice Chiefs, and Service Senior Enlisted Advisors" and chaired by the Under Secretary of Defense for Personnel and Readiness. | Defendants do not dispute that Plaintiffs' Exhibit X is a true and correct copy of Secretary Mattis's Terms of Reference or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit X for a complete and accurate statement of its contents. |
| 57. | The Terms of Reference also directed that the panel would conduct an "independent multidisciplinary review and study of relevant data and information … to inform the Implementation Plan." | Defendants do not dispute that Plaintiffs' Exhibit X is a true and correct copy of Secretary Mattis's Terms of Reference or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit X for a complete and accurate statement of its contents. |
| 58. | The Terms of Reference explained that "[t]he Presidential Memorandum directs that the Department return to the | Defendants do not dispute that Plaintiffs' Exhibit X is a true and correct copy of Secretary Mattis's Terms of Reference or that Plaintiffs accurately quote a portion of that |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | longstanding policy and practice on military service by transgender individuals that was in place prior to June 2016." | document. Defendants respectfully refer the Court to Plaintiffs' Exhibit X for a complete and accurate statement of its contents. |
| 59. | The Terms of Reference states: "The Presidential Memorandum directs DoD to maintain the policy currently in effect, which generally prohibits accession of transgender individuals into military service." | Defendants do not dispute that Plaintiffs' Exhibit X is a true and correct copy of Secretary Mattis's Terms of Reference or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit X for a complete and accurate statement of its contents. |
| 60. | The Terms of Reference further states: "The Presidential Memorandum halts the use of DoD or DHS resources to fund sex-reassignment surgical procedures for military personnel . . . The [Panel's] implementation plan will enumerate the specific surgical procedures associated with sex reassignment treatment that shall be prohibited from DoD or DHS resourcing unless necessary to protect the health of the Service member." | Defendants do not dispute that Plaintiffs' Exhibit X is a true and correct copy of Secretary Mattis's Terms of Reference or that Plaintiffs accurately quote a portion of that document. Plaintiffs, however, do not cite to Exhibit X in paragraph 60. Rather, Plaintiffs cite to Plaintiffs Exhibit Y, which it not the Terms or Reference and does not support the assertion in this paragraph. Defendants respectfully refer the Court to Plaintiffs' Exhibit X for a complete and accurate statement of the contents of the Terms of Reference. |
| 61. | In conjunction with Secretary Mattis' Implementation Memorandum, Anthony Kurta (Performing the Duties of Under Secretary of Defense for Personnel and Readiness) issued a Memorandum entitled "Military Service by Transgender Individuals – Panel of Experts." In this Memorandum, Acting Under Secretary Kurta enlisted three Working Groups to support the Panel. | The first sentence is undisputed.<br><br>The second sentence is undisputed with the clarification that it is an incomplete summary of Plaintiffs' Exhibit Y. Mr. Kurta directed three working groups, each with its own "assigned area[] of focus and expertise," to "gather the information and promote the analysis" required to support the independent review of the Panel of Experts. Pls. Ex. Y. Defendants respectfully refer the Court to Plaintiffs' Exhibit Y for a complete and accurate statement of its contents. |
| 62. | Acting Under Secretary Kurta instructed that the Working Groups | Disputed because this paragraph mischaracterizes the Secretary's statements in |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | would assist the Panel to "gather the information and promote the analysis" that Secretary Mattis had directed in the Terms of Reference Memorandum. | the Terms of Reference. Secretary did not direct a particular analysis. In fact, the Terms of Reference direct only that the Panel of Experts conduct an "independent multidisciplinary review and study of relevant data and information." Pls. Ex. Y. Defendants respectfully refer the Court to Plaintiffs' Exhibit Y for a complete and accurate statement of its contents. |
| 63. | The Working Groups were: 1) Medical and Personnel Executive Steering Committee (MEDPERS); 2) Retention & Non-Deployability Working Group; and 3) Transgender Personnel Policy Working Group. | Undisputed. |
| 64. | An agenda and slides prepared for the Transgender Personnel Policy Working Group's kickoff meeting reproduced the text of President Trump's tweet stating that the government "will not accept or allow Transgender individuals to serve in any capacity in the U.S. Military" and identified it as "Policy Guidance." | Defendants do not dispute that Plaintiffs' Exhibit Z is a true and correct copy of a presentation for the Transgender Personnel Policy Group that was produced by Defendants. |
| 65. | In October 2017, the recommendation of the MEDPERS subgroup regarding the changes to DoDI 6130.03 "was forwarded to the Transgender Panel of Experts" and "the POE also unanimously recommended adoption and forwarded to the SECDEF and White House for decision." | Defendants dispute this paragraph because it is based on, or constitutes, hearsay inadmissible for the truth of the matter asserted. *See* Fed. R. Evid. 802. |
| 66. | The Panel met eight times, from October 13, 2017 to November 30, 2017, before meeting again to vote on December 7, 2017. | Defendants dispute this paragraph because it contains no citation to the proper record (or any purported evidentiary material at all), as stated in recurring objection 2. In fact, the Panel of Experts met 13 times in 90 days. Report 18, Dkt. 96-2. Then, "[a]fter extensive review and deliberation, which included evidence in support of and against the Panel's |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | recommendations, the Panel exercised its professional military judgment and made recommendations." *Id.* |
| 67. | An internal Department of Defense document dated October 20, 2017 shows a straight line connecting the August 25 Presidential Memorandum, the Panel meetings, and the Secretary of Defense briefing to the President on transgender policy, under the title "T[ransgender] Policy Development Timeline," as shown [in Ex. 1, TG Policy Development Timeline] | Disputed. Plaintiffs' Statement mischaracterizes the cited slide from Plaintiffs' Exhibit BB. The slide is from the Army, not the Department of Defense. Plaintiffs cite a slide from an Army slide show, as reflected by the fact that slides contain Army logosand are branded with Army-specific Bates numbers. Defendants further dispute Plaintiffs' characterization of the contents of Plaintiffs' exhibit BB. The slide depicts a timeline, which is "any chronological summary or listing of historical or planned events." Webster's New World College Dictionary, 4th Edition, *available at* https://www.collinsdictionary.com/us/dictionary/english/timeline. |
| 68. | The Defendants have entirely redacted or withheld the Panel meeting minutes from Panel Meeting VI (November 16, 2017), Panel Meeting VII (November 21, 2017), Panel Meeting VIII (November 30, 2017), and Panel Meeting IX (December 7, 2017). | Defendants dispute the assertions in this paragraph because they are not material facts, as stated in recurring objection 1, and because the paragraph contains no citation to the proper record (or any purported evidentiary material at all), as stated in recurring objection 2. Defendants also dispute this paragraph because an assertion of privilege is not a "fact" that can properly substantiate a motion for summary judgment. No adverse inference arises from an assertion of privilege. *See, e.g., Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp.*, 383 F.3d 1337, 1344 (Fed. Cir. 2004) (en banc) (attorney-client and work product); *Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 225–26 (2d Cir.1999) (no adverse inference from the defendant's refusal to produce an attorney opinion letter), *overruled on other grounds sub nom. Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418 (2003); *Parker v. Prudential Ins. Co.*, 900 F.2d 772, 775 (4th Cir.1990) (no |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | negative inference from assertion of attorney-client privilege); *see also United States ex rel. Barko v. Halliburton Co.*, 241 F. Supp. 3d 37, 54 (D.D.C. 2017) (holding an assertion of attorney-client privilege "cannot create an adverse inference," and collecting authorities). |
| 69. | On January 11, 2018, Robert Wilkie, who chaired the Panel, issued an "Action Memo," addressed to Secretary Mattis. The Memo summarized the scope of the Panel's responsibilities as follows: "On September 14, 2017, you directed the establishment of a Panel of Experts to review and recommend changes to Department of Defense policies regarding the service of transgender individuals . . . in accordance with direction from the President on August 25, 2017." | Disputed in part. Defendants do not dispute that Plaintiffs' Exhibit CC is a true and correct copy of a January 11, 2018 memorandum from Secretary Wilkie nor that Secretary Wilkie chaired the Panel of Experts.<br><br>Defendants dispute, however, that the quoted language in the memorandum "summarized the scope of the Panel's responsibilities." This statement improperly purports to summarize and characterize Exhibit CC. The document itself does not indicate that the quoted language is a summary of the scope of the Panel's responsibilities as Plaintiffs claim. Further, Plaintiffs' characterization of the memorandum is incomplete as it only quotes the first of six paragraphs which also discuss the review of the Panel of Experts and characterizes that paragraph as a "summary" of the "scope of the Panel's responsibilities." For example, the Plaintiffs omit the third, fourth and fifth paragraphs of the same memorandum which also discuss the scope of the Panel's review. For a complete and accurate statement of the contents of the memorandum Defendants respectfully refer the Court to the document itself. |
| 70. | According to the Action Memo, the Panel recommended that transgender persons should be permitted to serve "only in their biological sex and without receiving cross-sex hormone therapy or surgical transition support." | Defendants do not dispute that Plaintiffs' Exhibit CC is a true and correct copy of a January 11, 2018 memorandum from Secretary Wilkie nor that the quoted words are contained within Exhibit CC. However, Defendants dispute Plaintiffs' assertion because it is |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | incomplete as the quoted language contains only part of the Panel's recommendation. For a complete and accurate statement of the contents of the memorandum Defendants respectfully refer the Court to the document itself. |
| 71 | On February 22, 2018, Secretary Mattis sent a Memorandum to the President ("Mattis Plan") endorsing policies set out in an attached report entitled "Department of Defense Report and Recommendations on Military Service by Transgender Persons" (the "Report"). The February 22 Memorandum and the attached Report were released to the public on March 23, 2018. | Undisputed, except that the Secretary's February 22, 2018, Memorandum does not contain the label ("Mattis Plan"). For a complete and accurate statement of the contents of the Secretary's Memorandum and the accompanying report Defendants respectfully refer the Court to the documents themselves. |
| 72. | In a Memorandum dated March 23, 2018, President Trump confirmed receipt of the Mattis Plan and Report and revoked his August 25 Memorandum. | Undisputed, except that the Secretary's February 22, 2018, Memorandum does not contain the label ("Mattis Plan"). For a complete and accurate statement of the contents of the President's March 23, 2018 memorandum Defendants respectfully refer the Court the document itself. |
| 73. | The Mattis Plan and the Report set forth policies relating to transgender individuals. | Defendants dispute Plaintiffs' characterization and summary of the DoD policy. The DoD policy is based upon a history or diagnosis of gender dysphoria, not on a person's transgender status. *See* Mattis Mem. 2, Dkt. 96-1; Report 4–5, 19, 32, 41–42, Dkt. 96-2. For a complete and accurate statement of the contents of Secretary's Memorandum and the Report, Defendants respectfully refer the Court to the documents themselves. |
| 74. | The policies require transgender individuals to serve in "their biological sex." | Defendants dispute Plaintiffs' characterization and summary of the DoD policy. The DoD policy is not based upon an individual's transgender status, but rather whether an individual has a history or diagnosis of gender |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | dysphoria, not on a person's. *See* Mattis Mem. 2, Dkt. 96-1; Report 4–5, 19, 32, 41–42, Dkt. 96-2. Defendants dispute this statement further because DoD policy authorizes current service members who have received a diagnosis of gender dysphoria to serve in their preferred gender. Report 43, Dkt. 96-2. For a complete and accurate statement of the contents of Secretary's Memorandum and the Report, Defendants respectfully refer the Court to the documents themselves. |
| 75. | The policies exclude from military service any "transgender persons who require or have undergone gender transition." | Defendants dispute Plaintiffs' characterization and summary of the DoD policy. The DoD policy is not based upon an individual's transgender status, but rather whether an individual has a history or diagnosis of gender dysphoria, not on a person's. *See* Mattis Mem. 2, Dkt. 96-1; Report 4–5, 19, 32, 41–42, Dkt. 96-2. Defendants dispute this statement further because DoD policy authorizes current service members who have received a diagnosis of gender dysphoria to serve in their preferred gender. Report 43, Dkt. 96-2. For a complete and accurate statement of the contents of Secretary's Memorandum and the Report, Defendants respectfully refer the Court to the documents themselves. |
| 76. | No other military policy excludes a class of persons from an equal opportunity to enlist or serve in the U.S. Armed Forces based on their identity. | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1, and also because it does not contain any citation to the record, as stated in recurring objection 2. Thus, this paragraph is contrary to Local Rule 7(h)(i) which requires that each assertion "include references to the parts of the record relied on to support the statement." The statement is further disputed because the military presumptively disqualifies accessions based on a host of medical conditions. *See* DoDI 6130.03. |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| 77. | The Mattis Plan and the Report contain a provision that permits currently serving service members diagnosed with gender dysphoria by military medical personnel since the Carter policy took effect in July 2016 and before the effective date of the Mattis policy to "continue to serve in their preferred gender and receive medically necessary treatment for gender dysphoria." | Defendants dispute Plaintiffs' characterization and summary of the DoD policy. For a complete and accurate statement of the contents of Secretary's Memorandum and the Report, Defendants respectfully refer the Court to the documents themselves. Mattis Mem., Dkt. 96-1; Report, Dkt. 96-2. |
| 78. | Neither the Mattis Plan nor the Report defines what care is "medically necessary." | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1, and also because it does not contain any citation to the record, as stated in recurring objection 2. For a complete and accurate statement of the contents of Secretary's Memorandum and the Report, Defendants respectfully refer the Court to the documents themselves. Mattis Mem., Dkt. 96-1; Report, Dkt. 96-2. |
| 79. | During the process leading up to the Mattis Plan and Report, one or more of the Working Groups considered "what specific surgical procedures should not be resourced from DoD or DHS funding." Col. Mary Krueger testified that "there's been discussions of what would be funded and what wouldn't be funded." Col. Krueger was instructed not to answer the question of what "different options were under consideration." | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1.<br><br>The first sentence is also disputed because it mischaracterizes and summaries the cited testimony. In fact, the deponent clarified that she did not "recall the specific setting" that the "consideration" of surgical procedures was discussed. Pls. Ex. K at 156:23–24.<br><br>The third sentence is also disputed because an assertion of privilege is not a "fact" that can properly substantiate a motion for summary judgment. No adverse inference arises from an assertion of privilege. *See, e.g.*, *Knorr-Bremse Systeme Fuer Nutzfahrzeuge GmbH v. Dana Corp.*, 383 F.3d 1337, 1344 (Fed. Cir. 2004) (en banc) (attorney-client and work product); *Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 225–26 (2d Cir.1999) (no adverse inference from the |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | defendant's refusal to produce an attorney opinion letter), *overruled on other grounds sub nom. Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418 (2003); *Parker v. Prudential Ins. Co.*, 900 F.2d 772, 775 (4th Cir.1990) (no negative inference from assertion of attorney-client privilege); *see also United States ex rel. Barko v. Halliburton Co.*, 241 F. Supp. 3d 37, 54 (D.D.C. 2017) (holding an assertion of attorney-client privilege "cannot create an adverse inference," and collecting authorities). |
| 80. | The Report states that "should its decision to exempt these Service members be used by a court as a basis for invalidating the entire policy, this exemption instead is and should be deemed severable from the rest of the policy." | Defendants dispute Plaintiffs' characterization and summary of the DoD policy. For a complete and accurate statement of the contents of Secretary's Memorandum and the Report, Defendants respectfully refer the Court to the documents themselves. Mattis Mem., Dkt. 96-1; Report, Dkt. 96-2. |
| 81. | The American Psychological Association responded to the February 22 Memorandum and the attached Report, stating that it was "alarmed by the administration's misuse of psychological science to stigmatize transgender Americans and justify limiting their ability to serve in uniform and access medically necessary health care." | Defendants dispute the assertions in this paragraph because they are not material facts, as stated in recurring objection 1, and because they are based on, or constitute, hearsay inadmissible for the truth of the matter asserted, as stated in recurring objection 3. The statement appears to be made by Arthur C. Evans Jr., Ph.D., and not the American Psychological Association. *See* Pls.' Ex. GG. Second, Defendants dispute the allegations in the statement because the contentions of Arthur C. Evans Jr., PhD are not supported with a proper evidentiary foundation, citing only to a resolution that the APA's governing Council of Representatives adopted in 2008 which in itself is an unauthenticated document containing hearsay, not admissible evidence. Third, Plaintiffs have not offered Mr. Evans as an expert witness or satisfied the requirements of Fed. R. Civ. P. 26(a)(2)(C). |
| 82. | The American Medical Association also responded, stating that "there is | Defendants dispute the assertions in this paragraph because they are not material facts, |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | no medically valid reason—including a diagnosis of gender dysphoria—to exclude transgender individuals from military service" and stating that the Mattis Plan "mischaracterized and rejected the wide body of peer-reviewed research on the effectiveness of transgender medical care." | as stated in recurring objection 1, and because they are based on, or constitute, hearsay inadmissible for the truth of the matter asserted, as stated in recurring objection 3. The statement appears to be made by James L. Madara, MD and not the American Medical Association. *See* Pls.' Ex. HH. Second, Defendants dispute the allegations in the statement because the contentions of James L. Madara, MD are not supported with a proper evidentiary foundation, citing only to a policy statement by an advocacy group that in itself is not supported by proper evidentiary foundations and contains inadmissible hearsay. Third, Plaintiffs have not offered Dr. Madara as an expert witness or satisfied the requirements of Fed. R. Civ. P. 26(a)(2)(C). |
| 83. | On March 30, the Department of Defense issued an updated version of Department of Defense Instruction 6130.03: "Medical Standards for Appointment, Enlistment, or Induction into the Military Services." The Instruction became effective on May 6, 2018. | Undisputed. |
| 84. | DODI 6130.03 states that it is the policy of the Department of Defense of to use "common medical standards for appointment, enlistment or induction of personnel" that screen for medical and mental health conditions to ensure that individuals are "medically capable of performing duties," including screening for suicidality, anxiety, and depression." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Plaintiffs' Exhibit II is a true and correct copy of a DoDI 6130.03 or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit II for a complete and accurate statement of its contents. |
| 85. | In April 2018, each of the military service chiefs of staff testified before Congress, stating that military service by transgender people had not caused any issues of unit cohesion, | Disputed for the grounds in recurring objections 1 and 2. This paragraph is additionally disputed because it inaccurately characterizes and summarizes congressional testimony by the Chief of Staff of the Army, the Chief of Naval Operations, and the |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | discipline, or morale in their respective services. | Commandant of the Marine Corps. For a complete and accurate statement of the congressional testimony of the Chief of Staff of the Army, the Chief of Naval Operations, and the Commandant of the Marine Corps the Defendants respectfully refer the Court to the testimony itself. Defendants further dispute Plaintiffs' claim that the service chiefs stated "that military service by transgender people had not cause any issues of unit cohesion, discipline, or morale in their respective services" as these statements are not contained within the congressional testimony cited by Plaintiffs in support of their assertion. Rather, the Chief of Staff of the Army, Chief of the Air Force, and the Chief of Naval Operations, and the Commandant of the Marine Corps stated that they had not received reports of issues relating to unit cohesion or discipline arising from service by transgender service members. However, Secretary Mattis himself, later testified to Congress that reports of such issues would not have come up to the level of those officials due to limitations in the Carter policy on reporting information relating to transgender service members. *See* Department of Defense Budget Posture, United States Senate Committee On Armed Services (April 26, 2018) at 63, available at https://www.armed-services.senate.gov/imo/media/doc/18-44_04-26-18.pdf; *see also* Report 37 n.143, Dkt. 96-2. |
| 86. | Admiral John Richardson, from the Navy, testified that he was "not aware of any issues" of "unit cohesion, disciplinary problems, or issues with morale resulting from open transgender service." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Plaintiffs accurately quote a portion of the incomplete transcript in Plaintiffs' Exhibit KK. Defendants respectfully refer the Court to pages 81–86 of the official transcript of the hearing, located at https://www.armed-services.senate.gov/imo/media/doc/18-42_04-19-18.pdf, for a complete and accurate account of Admiral Richardson's and General Neller's |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | testimony concerning transgender sailors and marines. |
| 87. | General Robert Neller, from the Marine Corps, testified that he had not heard of any problems with "discipline" or "cohesion of the force." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Plaintiffs accurately quote a portion of the incomplete transcript in Plaintiffs' Exhibit KK. Defendants respectfully refer the Court to pages 81–86 of the official transcript of the hearing, located at https://www.armed-services.senate.gov/imo/media/doc/18-42_04-19-18.pdf, for a complete and accurate account of Admiral Richardson's and General Neller's testimony concerning transgender sailors and marines. |
| 88. | General Mark Milley, from the Army, testified that he had "received precisely zero reports . . . of issues of cohesion, discipline, morale, and all those sorts of things." | Subject to recurring objection 1 that the assertions in this paragraph are not material facts, Defendants do not dispute that Plaintiffs accurately quote a portion of the incomplete transcript in Plaintiffs' Exhibit LL. Defendants respectfully refer the Court to pages 94–101 of the official transcript of the hearing, located at https://www.armed-services.senate.gov/imo/media/doc/18-37_04-12-18.pdf, for a complete and accurate account of General Milley's testimony concerning transgender soldiers. |
| 89. | Under current Department of Defense policy, "[s]ervice members who have been non-deployable for more than 12 consecutive months, for any reason, will be processed for administrative separation . . . ." | Defendants do not dispute that Plaintiffs' Exhibit MM is a true and correct copy of a memorandum dated February 14, 2018, or that Plaintiffs accurately quote a portion of that document. Defendants respectfully refer the Court to Plaintiffs' Exhibit MM for a complete and accurate statement of its contents. |
| 90. | Plaintiffs in this lawsuit are five active duty service members in the United States military who serve openly as transgender people; one active duty service member who has | Defendants dispute the assertions in this paragraph because it contains no citation to the proper record (or any purported evidentiary material at all), as stated in recurring objection 2. |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | not yet disclosed her transgender status; and four transgender people who seek admission to the military, either through the process of enlistment or through an academic program that leads to a commission. All plaintiffs have a history or diagnosis of gender dysphoria or have undergone the process of gender transition. | Additionally, there are three, not four, Plaintiffs who are treated as prospective service members: Jane Doe 7, John Doe 2, and Dylan Kohere. Plaintiff Regan Kibby is a midshipman at the United States Naval Academy. Decl. of Regan Kibby ¶ 1, Dkt. 13-14. Because Midshipman Kibby is considered to be a current service member who has been diagnosed with gender dysphoria, the reliance exception under the DoD policy applies to Midshipman Kibby and he will be allowed to return to the U.S. Naval Academy following his medical leave and commission as an officer, provided he meets the Academy's commissioning requirements. Plaintiffs have conceded this point in their Opposition to Defendants' Motion to Dismiss and Motion to Dissolve the Preliminary Injunction. *See* Dkt. 130 at 14 n.6. |
| 91. | Jane Doe 2 has been enlisted in the National Guard since 2003 and has been on active duty in the United States Army since 2006. | Undisputed. |
| 92. | Jane Doe 2 notified her command that she was transgender after the United States Department of Defense announced in June 2016 that it would allow transgender service members to serve openly in the military. She was diagnosed with gender dysphoria by a military health care provider. | Subject to recurring objection 2 as to the first sentence, undisputed. |
| 93. | Jane Doe 2 began to seek medical treatment relating to her gender transition in September 2016. | Undisputed. |
| 94. | After President Trump issued his August 25 Memorandum, Jane Doe 2 was placed on an assignment that required her to drive far from base that kept her from supervising soldiers she was assigned to mentor | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1. The allegations in the first sentence occurred before, and thus do not relate to, the development and release of the Department of Defense's policy. Plaintiffs cite |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | and train. Defendants have offered no explanation for her separation from the other soldiers. | as support Jane Doe 2's declaration, but that declaration was signed on August 29, 2017. *See* Jane Doe 2 Decl. at 6, ECF 40-2. The Panel of Experts did not begin meeting until September 2017, and the Department of Defense did not release its new policy until March 23, 2018. *See* Mattis Mem., Dkt. 96-1; Report 17, Dkt. 96-2; 2018 Presidential Memorandum, Dkt. 96-3.<br><br>The second sentence is also disputed. Jane Doe 2 was not placed on a work detail that isolated her from her assigned junior soldiers and her unit due to her transgender status. Exh. 11, [redacted] Decl. ¶ 3. Jane Doe 2 "never expressed to [her company commander] or [her] First Sergeant, the senior enlisted leader in the company, any concerns or discontent with her assigned position." *Id.* "Jane Doe 2 is an [redacted] She currently is assigned to the [redacted] Prior to her arrival, the [redacted] position was not filled due to personnel shortages, which was a critical shortage for [that] type of unit. Jane Doe 2's arrival allowed [the unit] to fill an empty slot that was needed in order to meet [the] unit's operational requirements. She also has four assigned junior enlisted soldiers that regularly report directly to her." *Id.* ¶ 4. "The [redacted] is the unit that distributes repair parts to supply units in the field for further distribution. It is located on [redacted], approximately 15 minutes from [the] unit's building. The [redacted] is primarily responsible for regularly driving to the [redacted] and picking up requisitioned repair parts for the company and delivering them to the unit's motor pool where vehicles are stored and maintained. Per the unit's |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | standard policy, Jane Doe 2's normal duty day is from 9am to 6pm, with lunch from 11:30am to 1:00pm. Depending on the number of parts to pick up and deliver, [redacted] runs can take anywhere from two to three hours to all day, but the [redacted] usually closes for business at 5pm. She is also required to attend physical fitness training each morning along with her assigned soldiers prior to his 9am work call, and attend any mandatory training with her soldiers and the rest of the unit." *Id.* ¶ 5. "Jane Doe 2's duty as the [redacted] was an assigned duty based upon her qualifications due to her rank and MOS, and the unit's authorized and required duty positions; it is not an additional duty or work detail. Her travel to and from the [redacted] is due to the normal job description for any [redacted] [.]" *Id.* ¶ 6. |
| 95. | Jane Doe 3 has served in the United States Army since 2015. | Undisputed. |
| 96. | In or around June 2016, Jane Doe 3 notified her command that she was transgender. She was diagnosed with gender dysphoria by a military health provider. | Undisputed. |
| 97. | After the President's July 26 tweets regarding transgender military service, Jane Doe 3 heard other service members "remark[] people who kill transgender people should not be Punished. | Defendants dispute this paragraph because it does not contain a material fact, as stated in recurring objection 1. In addition, rather than setting forth a statement of material fact supported by admissible evidence, Plaintiffs improperly cite to a statement of unidentified "service members." The statement by the unidentified "service members" also constitutes hearsay inadmissible for the truth of the matter asserted, as stated in recurring objection 3. |
| 98. | Jane Doe 3 has obtained a transition plan that includes surgery. She has not yet undergone any transition-related surgery. | The first sentence is undisputed.<br><br>The second sentence is disputed to the extent that it implies that any delay in receiving transition-related surgery was caused by Defendants in connection with any policy or |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | practice regarding military service by transgender individuals. Captain Raymond Keeler explained that Jane Doe 3 deployed to northern Iraq on or about [redacted] her deployment was scheduled for approximately nine months, and she was scheduled to return home in May or June 2018. Keeler Decl. ¶ 3, Dkt. 46-3, 56-3. |
| 99. | Jane Doe 4 has served in the United States Army since 2000. | Undisputed. |
| 100. | In or around June 2016, Jane Doe 4 met with her commanding officer to identify herself as transgender. | Undisputed. |
| 101. | Jane Doe 4's current contract with the military extends through June 2018. She has re-enlisted to complete two additional years of service following the expiration of her current contract so that she can reach twenty years of service and receive retirement benefits. | Undisputed. |
| 102. | Jane Doe 6 joined the Army in 2014. | Undisputed. |
| 103. | Jane Doe 6 has received hundreds of hours of specialized training, above the basic training required for her position, in joint target development, joint battle assessment, unmanned aerial surveillance, and computer science. | Undisputed. |
| 104. | Jane Doe 6 is transgender. | Undisputed. |
| 105. | Jane Doe 6 had made a behavioral health appointment to obtain a transition plan when President Trump tweeted his announcement on July 26. | Undisputed that Jane Doe 6 had made a behavioral health appointment, but disputed that she would have obtained a transition plan at that appointment. Under DoDI 1300.28, a service member must first "receive[] a diagnosis from a military medical provider for which gender transition is medically necessary" and then the service member must go through the gender transition approval process. |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| 106. | Concerned by the tweets, Jane Doe 6 never came out to her doctors or chain of command as transgender, nor did she receive a diagnosis of gender dysphoria. | Undisputed. |
| 107. | Jane Doe 6 is concerned that if she notifies her command that she is transgender and seeks health care for the distress she experiences from having to serve in a manner inconsistent with her gender identity, she will face separation from the military. | Undisputed that Jane Doe 6 "is concerned," but disputed that "she will face separation from the military" "if she notifies her command that she is transgender and seeks health care." The DoD policy includes an exemption for "transgender Service members who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy, but before the effective date of any new policy." Report 43, Dkt. 96-2 Mattis Mem. 2, Dkt. 96-1. Under the policy, these Service members "may continue to receive all medically necessary treatment, to change their gender marker in DEERS, and to serve in their preferred gender, even after the new policy commences." Report 43, Dkt. 96-2 Mattis Mem. 2, Dkt. 96-1. "[T]he Department will, if permitted to implement its proposed new policy, exempt any Service member who was diagnosed with gender dysphoria prior to the effective date of the Carter policy and has continued to serve and receive treatment pursuant to the Carter policy after it took effect." Exh. 2, Barna Decl. ¶ 6. "In addition, because the new policy is not yet in effect, at present the Department will exempt any current Service member who is diagnosed with gender dysphoria by a military medical provider before the effective date of the new policy." *Id.* |
| 108. | Jane Doe 6's separation from service would have serious negative repercussions for her career and livelihood. | Defendants dispute this paragraph because it is not supported by competent, admissible evidence, as stated in recurring objection 3. More specifically, Jane Doe 6's declaration is based upon impermissible speculation and, therefore, is not admissible. *See Wilkerson v. Wackenhut Protective Servs., Inc.*, 813 F.Supp.2d 61, 67 (D.D.C.2011) (explaining that personal |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | belief, speculation, and hearsay are insufficient to defeat a motion for summary judgment).<br><br>Defendants also dispute that Jane Doe 6 would face separation. The DoD policy includes an exemption for "transgender Service members who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy, but before the effective date of any new policy." Report 43, Dkt. 96-2 Mattis Mem. 2, Dkt. 96-1. Under the policy, these Service members "may continue to receive all medically necessary treatment, to change their gender marker in DEERS, and to serve in their preferred gender, even after the new policy commences." Report 43, Dkt. 96-2 Mattis Mem. 2, Dkt. 96-1. "[T]he Department will, if permitted to implement its proposed new policy, exempt any Service member who was diagnosed with gender dysphoria prior to the effective date of the Carter policy and has continued to serve and receive treatment pursuant to the Carter policy after it took effect." Exh. 2, Barna Decl. ¶ 6. "In addition, because the new policy is not yet in effect, at present the Department will exempt any current Service member who is diagnosed with gender dysphoria by a military medical provider before the effective date of the new policy." *Id.* |
| 109. | Jane Doe 6 is also concerned that, to avoid separation, she must forego transition related health care and live inconsistently with her gender identity. | Undisputed that Jane Doe 6 "is concerned," but disputed that "to avoid separation, she must forego transition related health care and live inconsistently with her gender identity." The DoD policy includes an exemption for "transgender Service members who were diagnosed with gender dysphoria by a military medical provider after the effective date of the Carter policy, but before the effective date of any new policy." Report 43, Dkt. 96-2 Mattis Mem. 2, Dkt. 96-1. Under the policy, these Service members "may continue to receive all medically necessary treatment, to change their gender marker in DEERS, and to serve in their |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | preferred gender, even after the new policy commences." Report 43, Dkt. 96-2 Mattis Mem. 2, Dkt. 96-1. "[T]he Department will, if permitted to implement its proposed new policy, exempt any Service member who was diagnosed with gender dysphoria prior to the effective date of the Carter policy and has continued to serve and receive treatment pursuant to the Carter policy after it took effect." Exh. 2, Barna Decl. ¶ 6. "In addition, because the new policy is not yet in effect, at present the Department will exempt any current Service member who is diagnosed with gender dysphoria by a military medical provider before the effective date of the new policy." *Id.* |
| 110. | Jane Doe 7 is a transgender woman who had begun seeking to join the Coast Guard when the Mattis Plan and Report were released to the public on March 23, 2018. | Disputed to the extent that Plaintiffs allege that Jane Doe 7 had been seeking to join the Coast Guard on March 23, 2018. The last contact Jane Doe 7 had with a Coast Guard recruiter was January 12, 2018. Exh. 12, Hopkins Decl. ¶ 2. |
| 111. | Jane Doe 7 went through the process of gender transition seven years ago. | Disputed to the extent that Jane Doe 7's reference to "gender transition" implies that she has had completed sex reassignment surgery. Jane Doe 7 "plan[s] to have one additional surgery this summer." Jane Doe 7 Decl. ¶ 1 (attached as Exhibit B to Cambier Decl. at Dkt. 129). |
| 112. | Unless the policy set forth in the Mattis Plan and Report is enjoined, Jane Doe 7 will be unable to join the Coast Guard. | Defendants dispute this paragraph because it contains no citation to the proper record (or any purported evidentiary material at all), as stated in recurring objection 2.<br><br>Defendants also dispute this paragraph because Jane Doe 7 may apply for a waiver to join the Coast Guard under the new DoD policy. Report 5, 42, Dkt. 96-2.<br><br>Further, because even if the Court enjoins the new DoD policy, it is speculative whether Jane |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | Doe 7 would be able to join the Coast Guard. Jane Doe 7 states that she "plan[s] to have one additional surgery this summer, and then [she] plan[s] on enlisting 18 months later." Jane Doe 7 Decl. ¶ 1(attached as Exhibit B to Cambier Decl. at Dkt. 129). But even under the Carter policy, she may not be able to access into the military at that point. "A history of sex reassignment or genital reconstruction surgery is disqualifying, unless, as certified by a licensed medical provider: (a) a period of 18 months has elapsed since the date of the most recent of any such surgery; and (b) no functional limitations or complications persist, nor is any additional surgery required." ECF 13-10, Exh. C (DTM 16-005 Attach. at 2). As DoD's Report recognizes, "recovery time for each of the surgical procedures can be substantial" and "the rate of complications for these surgeries is significant." Report 23. In addition, under the Carter policy, Jane Doe 7 would have to show that she has been stable in her preferred gender for 18 months. ECF 13-10, Exh. C (DTM 16-005 Attach. at 1). |
| 113. | John Doe 1 was a Reserve Officers' Training Corps ("ROTC") cadet from 2014 to 2016 and has served as a Second Lieutenant in the United States Army since July 2016. | Undisputed. |
| 114. | John Doe 1 advised his superiors in ROTC that he is transgender. | Undisputed. |
| 115. | John Doe 1 was commissioned as a Second Lieutenant shortly after the Department of Defense announced that transgender people would be permitted to serve openly. | Undisputed. |
| 116. | John Doe 1 notified his command that he was transgender. | Undisputed. |
| 117. | After the President's tweets, John Doe 1's transition-related care was subject to delays. | Defendants dispute this paragraph for reasons in recurring objection 1, because the allegations occurred before, and thus do not relate to, the |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | development and release of the Department of Defense's policy. Plaintiffs cite as support John Doe 1's declaration, but that declaration was signed on August 28, 2017. *See* John Doe 1 Decl. at 10, Dkt. 40-2. The Panel of Experts did not begin meeting until September 2017, and the Department of Defense did not release its new policy until March 23, 2018. *See* Mattis Mem., Dkt. 96-1; Report 17, Dkt. 96-2; 2018 Presidential Memorandum, Dkt. 96-3.<br><br>Defendants also dispute this paragraph to the extent that Plaintiffs imply that all delays related to John Doe 1's transition-related care was caused by Defendants. An Army physician "called John Doe 1 on [redacted] to schedule his surgery, and followed up with him through email. [The Army] scheduled his surgery for [redacted] However, on September 24th, [John Doe 1] called [the physician] to reschedule his surgery because of a scheduling conflict. He [was] scheduled for surgery on [redacted] [redacted] Decl. ¶ 8, Dkt. 46-6, 56-6. "There were no intentional delays by the clinic staff or [the physician]." [redacted] Decl. ¶ 9, Dkt. 46-6, 56-6. |
| 118. | John Doe 2 is a transgender man who was in the process of enlisting in the Army when the Mattis Plan and Report were released to the public on March 23, 2018. | Undisputed. |
| 119. | John Doe 2 went through the process of gender transition almost a decade ago. | Undisputed. |
| 120. | John Doe 2 began working with a recruiter to enlist in the Army as soon as transgender people became eligible to accede in January 2018. | Undisputed. |
| 121. | John Doe 2 has submitted all his enlistment paperwork and is | Undisputed. |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | presently awaiting an enlistment date. | |
| 122. | If John Doe 2 is unable to join the Army, he will not be able to support himself and his family while completing school, and is therefore unlikely to achieve his goal of becoming an Army surgeon. | Defendants dispute this paragraph because it is not supported by competent, admissible evidence, as stated in recurring objection 3. More specifically, John Doe 2's declaration is based upon impermissible speculation and, therefore, is inadmissible. *See Wilkerson v. Wackenhut Protective Servs., Inc.*, 813 F.Supp.2d 61, 67 (D.D.C.2011) (explaining that personal belief, speculation, and hearsay are insufficient to defeat a motion for summary judgment).<br><br>Defendants also dispute this paragraph to the extent that Plaintiffs imply that John Doe 2 will not be able to join the Army because he went through the process of gender transition because John Doe 2 may apply for a waiver to join the Army. Report 5, 42, Dkt. 96-2. |
| 123. | Regan V. Kibby is a midshipman at the United States Naval Academy. | Undisputed. |
| 124. | Mr. Kibby disclosed to the Naval Academy that he is transgender. | Undisputed. |
| 125. | Mr. Kibby was approved for a medical leave of absence so that his transition would be complete in time for him to receive his commission in the U.S. Navy upon graduation. | Undisputed. |
| 126. | Mr. Kibby has continued to obtain transition-related treatment. | Undisputed. |
| 127. | Dylan Kohere is a college student. | Undisputed. |
| 128. | Mr. Kohere is transgender. | Undisputed. |
| 129. | After President Trump's tweets, Mr. Kohere was informed that, "due to his self-identification as transgender, [] he could not formally enroll in ROTC." | Disputed for reasons in recurring objection 1 because the allegations occurred before, and thus do not relate to, the Department of Defense's policy. Plaintiffs cite as support Robert Burns' declaration, but that declaration was signed on October 4, 2017. *See* Robert Burns Decl. at 9, ECF 45-3. The Department |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | of Defense did not release its new policy until March 23, 2018. *See* Mattis Mem., Dkt. 96-1; Report 17, Dkt. 96-2; 2018 Presidential Memorandum, Dkt. 96-3. Under the DoD policy, "[t]ransgender persons without a history or diagnosis of gender dysphoria, who are otherwise qualified for service, may serve, like all other Service members, in their biological sex." Mattis Mem. 3, Dkt. 96-1. |
| 130. | If Mr. Kohere is not allowed to enroll in ROTC, he will "lose educational and career opportunities . . . including extensive leadership training not available to other college students." | Disputed for the reason in recurring objection 1. Since DoD's policy was announced in March 2018, Mr. Kohere has failed to respond to any of the cadre's multiple requests to discuss his enrollment in ROTC, has not indicated whether he intends to continue participating or will attempt to enroll in ROTC during his sophomore year, and did not register for any ROTC classes in the upcoming fall semester. Exh. 4 (Heenan Decl. ¶ 2).<br><br>Defendants also dispute this paragraph because it is not supported by competent, admissible evidence, as stated in recurring objection 3. More specifically, Dylan Kohere's declaration is based upon impermissible speculation and, therefore, is inadmissible. *See Wilkerson v. Wackenhut Protective Servs., Inc.*, 813 F.Supp.2d 61, 67 (D.D.C.2011) (explaining that personal belief, speculation, and hearsay are insufficient to defeat a motion for summary judgment). |
| 131. | If Mr. Kohere is not allowed to enroll in ROTC, he will also be ineligible to apply for a ROTC scholarship. | Disputed for the reason in recurring objection 2. Plaintiffs cite to the declaration of Dylan Kohere, but Mr. Kohere lacks personal knowledge regarding eligibility for ROTC scholarships and therefore these statements are inadmissible. Fed. R. Civ. P. 56(c)(4); *see also United States v. Dynamic Visions, Inc.*, 216 F. Supp. 3d 1, 10 (D.D.C. 2016).<br><br>Undisputed that based on the Department's new accessions guidance, Mr. Kohere may apply and compete for a three- or two-year |

| | Assertion by Plaintiffs in Statement of Facts | Defendants' Responses |
|---|---|---|
| | | scholarship, but he is not eligible until he is enrolled as a cadet in ROTC. Exh. 4 (Heenan Decl. ¶ 2). Mr. Kohere cannot be enrolled in ROTC due to his non-compliance with the cadre's requests to discuss his enrollment, and therefore he is currently not eligible for a scholarship. Exh. 4 (Heenan Decl. ¶ 2). |

# Exhibit 11

## (Filed Under Seal)

Supplemental Declaration of Captain [redacted]

dated June 5, 2018

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

| | | |
|---|---|---|
| JANE DOE 1, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| v. | ) | Civil Action No. 17-cv-1597 (CKK) |
| | ) | |
| DONALD TRUMP, et al., | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

DECLARATION OF [redacted]
(Pertaining to Plaintiff Jane Doe 2)

I, [redacted], hereby declare as follows:

1. I am a Captain in the U.S. Army and the former commander of [redacted], from October 12, 2016 to May 17, 2018. During my time in the unit I was the company commander for [redacted], who is referred to as Jane Doe 2 in the present litigation.

2. I make this declaration based on my personal knowledge and on information provided to me in the course of my official duties while I was in command of Jane Doe 2's unit. I previously submitted a declaration in support of the defendants' motion to dismiss the above-captioned action and in opposition to the plaintiffs' motion for a preliminary injunction, which I now supplement with this declaration in support of defendants' motion to dismiss plaintiffs' second amended complaint, or, in the alternative, for summary judgment, and in opposition to the plaintiffs' cross-motion for summary judgment.

3. Jane Doe 2 arrived at my unit on [redacted]. I am aware of allegations that she believes she was placed on a work detail that has isolated her from her assigned junior soldiers

and her unit due to her transgender status. However, she was not assigned to any such details, nor was she purposefully segregated from her soldiers or her unit, due to her transgender status. She also never expressed to me or my First Sergeant, the senior enlisted leader in the company, any concerns or discontent with her assigned position.

4. Jane Doe 2 is an [redacted] which is a [redacted]. She currently is assigned to the [redacted] as the [redacted] for the unit. Prior to her arrival, the [redacted] position was not filled due to personnel shortages, which was a critical shortage for my type of unit. Jane Doe 2's arrival allowed us to fill an empty slot that was needed in order to meet my unit's operational requirements. She also has four assigned junior enlisted soldiers that regularly report directly to her.

5. The [redacted] is the unit that distributes repair parts to supply units in the field for further distribution. It is located on [redacted], approximately 15 minutes from my unit's building. The [redacted] is primarily responsible for regularly driving to the [redacted] and picking up requisitioned repair parts for the company and delivering them to the unit's motor pool where vehicles are stored and maintained. Per the unit's standard policy, Jane Doe 2's normal duty day is from 9am to 6pm, with lunch from 11:30am to 1:00pm. Depending on the number of parts to pick up and deliver, [redacted] runs can take anywhere from two to three hours to all day, but the [redacted] usually closes for business at 5pm. She is also required to attend physical fitness training each morning along with her assigned soldiers prior to his 9am work call, and attend any mandatory training with her soldiers and the rest of the unit.

6. Jane Doe 2's duty as the [redacted] was an assigned duty based upon her qualifications due to her rank and MOS, and the unit's authorized and required duty positions; it is not an additional duty or work detail. Her travel to and from the [redacted] is due to the normal job description for any [redacted] in a unit such as mine.

7. Jane Doe 2 was never assigned to any temporary work detail that required her to leave the installation. She was identified to serve on a detail in support of relief operations for Hurricane Harvey. She was not selected for the detail, however, due to the detail's conflict with her scheduled medical appointments for her transition-related treatment. We provided similar accommodations to work schedules for other non-transgender soldiers who had medical appointments.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 5 day of June 2018.

[redacted]

# Exhibit 12

## (Filed Under Seal)

Declaration of Commander Anna K. Hopkins,

dated June 5, 2018

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

| | |
|---|---|
| **JANE DOE 1, *et al.*,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**DONALD J. TRUMP, *et al.*,**<br><br>**Defendants.** | **Civil Action No. 17-cv-1597 (CKK)**<br><br>**DECLARATION OF COMMANDER ANNA K. HOPKINS, USCG, EXECUTIVE OFFICER, COAST GUARD RECRUITING COMMAND** |

I, Anna K. Hopkins, declare as follows:

1. I, Anna K. Hopkins, am a Commander in the United States Coast Guard. I have served in the Coast Guard as a commissioned officer for nineteen years and currently serve as the Executive Officer, Coast Guard Recruiting Command.
2. I am aware of the lawsuit in the above captioned case. I am aware that [redacted] is a named plaintiff in the case. [redacted] has contacted the U.S. Coast Guard Recruiting Office Chicago. She informed a recruiter there that she identifies as transgender and that she was planning to have gender reassignment surgery in 2018. The last contact that [redacted] had with the recruiter was January 12, 2018.

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

05 JUNE 2018
Date

A. Kathryn Hopkins
Anna K. Hopkins
Executive Officer, Coast Guard Recruiting Command